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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 88

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED APRIL 22, 1930

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1 In United States District Court, Northern District of Georgia, Atlanta Division

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, complainant,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT } No. —

Complaint in equity

To the honorable the Judges of said Court:

Atlanta, Birmingham & Coast Railroad Company brings this its bill against United States of America, and humbly complaining, respectfully avers:

First

Your orator is a corporation organized and existing under the laws of the State of Georgia. It is a common carrier by railroad within the meaning of the act to regulate commerce, approved February 4, 1887, and the amendments thereto. Its principal office and place of business, including its executive and accounting offices, are in the city of Atlanta, Fulton County, Georgia, which is in
2 the northern district of Georgia. Your orator owns and operates about 640 miles of railroad lines in the States of Alabama and Georgia.

Second

This is a suit of a civil nature in equity. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand ($3,000) dollars and arises under the Constitution and laws of the United States, and it is a proceeding under the act of Congress known as the urgent deficiencies act, approved October 22, 1913 (38 Stat. 219), and the Commerce Court act approved June 18, 1919 (36 Stat. 539), and the interstate commerce act and amendments thereto.

Third

Your orator is the successor corporation under the laws of Georgia, to Atlanta, Birmingham & Atlantic Railway Company, your orator's charter having been granted by the State of Georgia, upon petition to the honorable, the secretary of state of the State of Georgia, filed on the 2nd day of November, 1926, under and by virtue of the second title, chapter 2, article 6 of section 1, division 3 of the Code of Georgia of 1910, and especially section 2585, subdivisions 11 and 12 of the said Code of Georgia; and in pursuance of an act of the General Assembly of the State of Georgia approved December 7,

1892, and the act amendatory thereof approved December 15, 1894, and an act of the General Assembly approved August 1, 1922, and an act of the General Assembly approved August 22, 1925, and an act of the General Assembly approved August 30, 1926. The petitioners for the said charter were the purchasers of the property of the said Atlanta, Birmingham & Atlantic Rail-
3 way Company, a corporation under the laws of Georgia, which said property had been, as hereinafter more fully set forth, conditionally sold to the said purchasers on the 22nd day of June, 1926, pursuant to a certain decree of foreclosure and sale made in the cause entitled "Birmingham Trust & Savings Company, Complainant against Atlanta, Birmingham & Atlantic Railway Company, Defendant, Consolidated Cause in Equity No. 156," and the constituent causes in equity Nos. 156, 187, 188, and 190, which said decree of foreclosure and sale was entered on the 30th day of April, 1926, by this honorable court and thereafter adopted, rendered, and pronounced as the decree of the United States District Court for the Southern District of Georgia, and as the decree of the District Court of the United States for the Middle District of Georgia, and as the decree of the United States District Court for the Northern District of Alabama, and as the decree of the District Court of the United States for the Southern District of Florida. By a certain decree made in the said above entitled cause on November 16, 1926, under the circumstances hereinafter set out, the sale of the said property to the said purchasers was unconditionally confirmed.

The statute of the State of Georgia under which your orator was chartered and organized permitted the purchasers of a railroad property at foreclosure sale, their associates or assigns, to organize anew by filing a petition with the secretary of state, requesting to be substituted for the original petitioners and stockholders with all other powers, rights, privileges, duties, and liabilities under the aforementioned article of the Code of Georgia, as is hereinafter more fully set out.

4 Fourth

For some years prior to February 23, 1926, the properties of the Atlanta, Birmingham & Atlantic Railway Company had been in the receiver's hands, operated by the receiver appointed by this honorable court. The property was admittedly insolvent and there was no prospect of sale of said property for an amount sufficient to satisfy the bonds outstanding and secured by mortgages on the said property. On the said 23rd day of February, 1926, an agreement was entered into between a committee of the bondholders of said Atlanta, Birmingham & Atlantic Railway Company, acting under a deposit agreement of December 7, 1921, with respect to the 15-year 5% income mortgage gold bonds of Atlanta, Birmingham & Atlantic Railway Company, and a committee acting under a bondholders' agreement of September 26, 1921, in respect to the first mortgage

5% 5-30 gold coupon bonds of Atlantic & Birmingham Railway Company on the one part and Atlantic Coast Line Railroad Company on the other part. The said agreement contemplated the sale of the properties of Atlanta, Birmingham & Atlantic Railway Company, being the same property now owned by your orator, which said sale, it was expected, would be made under and pursuant to a decree of foreclosure in said cause. Under the said agreement of February 23, 1926, subject to necessary approval by this court, and by the Interstate Commerce Commission, it was agreed that there should be formed a new company which would acquire the properties of the said Atlanta, Birmingham & Atlantic Railway Company through the foreclosure proceedings then pending in this honorable court. It was also agreed, as aforesaid, that the new company so to be organized should, in payment for the property so to be acquired by it from the purchasers at said foreclosure sale, issue approximately $5,180,000.00 of its preferred stock and 150,000 shares of its no-par voting common stock. The preferred stock was, under the plan contemplated by the said agreement, to be accepted by the bondholders aforesaid in exchange for bonds of the said Atlantic & Birmingham Railway Company and bonds of the said Atlanta, Birmingham & Atlantic Railway Company at the rate of $60.00 of preferred stock for each $100.00 of such bonds. The said voting common stock was to be assigned and transferred to said Atlantic Coast Line Railroad in consideration of the payment by that company of certain debts of the Atlanta, Birmingham & Atlantic Railway Company set up in Exhibit A attached to said agreement of February 23, 1926, constituting liens on the property of said company prior to the said bonds.

Your orator is the new company which was contemplated by the said agreement of February 23, 1926, having been organized under the laws of the State of Georgia as contemplated by said agreement, and has acquired the said properties of the Atlanta, Birmingham & Atlantic Railway Company and in payment therefor has issued its common and preferred stock in the manner and under the circumstances hereinafter set forth.

Fifth

After the making of said agreement of February 23, 1926, above referred to, said bondholders duly formed a reorganization committee, which said committee on April 8, 1926, duly filed with the Interstate Commerce Commission, on behalf of your orator yet to be organized, an application pursuant to subdivision 18 of section 1 and subdivision 2 of section 20a of the interstate commerce act. In said application it was stated in part:

"Second. The applicant is to be organized under the laws of the State of Georgia or of such other State as the reorganization committee may, with the approval of the commission, determine, for the purpose, among other things, of acquiring and operating the lines

of railroad and other properties of the Atlanta, Birmingham & Atlantic Railway Company (hereinafter called the old company) and its receiver, pursuant to said plan and agreement of reorganization dated February 23, 1926, for the reorganization of the old company. Said plan and agreement (hereinafter called the plan) will be presented at the hearing of the application."

* * * * * * *

"Fourth. This application is

(a) for a certificate pursuant to subdivision 18 of section 1 of the interstate commerce act that the present or future public convenience and necessity require or will require that the applicant acquire and operate the lines of railroad and other properties of the old company and of its receiver, as aforesaid, and engage in transportation over and by means of the same;

(b) for the authorization, pursuant to subdivision 2 of section 20a of the interstate commerce act, of the issue by the applicant of $5,180,344.07 par value of its preferred stock and 150,000 shares without par value of its common stock in accordance with the provisions of the plan; and

(c) for any other action required to facilitate the consummation of the plan.

"Fifth. The purposes and uses of the proposed issue of capital stock are to acquire the lines of railroad and other properties of the old company and its receiver, as aforesaid, and to carry out the plan."

7 On April 12, 1926, Atlantic Coast Line Railroad Company filed its application in accordance with the terms of the said interstate commerce act for authority to acquire control of applicant by the purchase of all of its voting common stock and for authority to assume the obligations by it required to be assumed in accordance with the terms of said agreement of February 23, 1926.

Sixth

After the filing of said application with the Interstate Commerce Commission there was duly entered in this honorable court a decree of foreclosure and sale of the properties of the Atlanta, Birmingham & Atlantic Railway Company, said decree being dated April 30, 1926. There was also submitted to and approved by this honorable court the agreement of February 23, 1926, and the plan and agreement for the reorganization of the Atlanta, Birmingham & Atlantic Railway Company. Pursuant to said decree of foreclosure and sale, a sale was held on Tuesday, June 22, 1926, at which sale George E. Roosevelt and J. A. Fowler, jr., acting as a purchasing committee for the said reorganization committee under the said plan and agreement of reorganization of February 23, 1926, were the highest and only bidders for the property and assets described in the said decree of fore-

closure and sale, and a decree was duly entered confirming the sale on condition that the bid made by the said purchasing committee: "shall be and become final, effective, and binding only in the event that the Interstate Commerce Commission shall within a time which, in the opinion of the said court, is reasonable, make an order or orders pursuant to the application on behalf of the Atlanta,
8 Birmingham and Coast Railroad Company (I. C. C. Finance Docket 5454), and in the application of the Atlantic Coast Line Railroad Company (I. C. C. Finance Docket 5470), conferring authority sought in said applications substantially sufficient to enable the parties thereto to carry out the plan and agreement of reorganization therein set out, and heretofore submitted to and approved by the said United States District Court for the Northern District of Georgia, Northern Division, and upon the further condition that in the event said commission refuses the authority sought in said applications, or does not enter an order granting the same within a time which, in the opinion of said court, is reasonable, then said bidders may, at their option, withdraw their bid and receive their qualifying deposit; and that in no event shall said bidders be required to accept any conveyance of the property sold, or make any payment under their bid, or said decree of foreclosure and sale, unless and until the said Interstate Commerce Commission shall have granted the authority sought in said applications in the manner aforesaid."

Seventh

Subsequent to the above action by this honorable court, the applications filed as aforesaid by the bondholders' committee and Atlantic Coast Line Railroad Company came on to be argued before the Interstate Commerce Commission on or about July 14, 1926. In the course of this argument the commission was advised of the facts above set out and under date of October 26, 1926, the commission entered its report and order in F. D. 5454, this being the number assigned to the application filed by the bondholders' committee. The said report and order also embraced F. D. 5470, covering the
9 application filed by Atlantic Coast Line Railroad Company. In its said report the Interstate Commerce Commission stated: "There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line Railroad Company is in the public interest."

The commission also stated—

"We find that the public convenience and necessity require the acquisition and operation of the lines of the A. B. & A. by the reorganization committee and the new company, and a certificate will be issued to that effect to take effect after 30 days. The new company has not been incorporated. We are advised by counsel for the applicants that incorporation under the laws of the State of Georgia is

considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the new company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to assume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the new company, accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order."

Eighth

A copy of this report and order was duly filed with this honorable court in the foreclosure proceeding, above referred to, then pending before this court. The condition, subject to which the bid of the purchasing committee had been made, was withdrawn and under date of November 16, 1926, this court ordered, among other things—

10 "That the bid of George E. Roosevelt, and J. A. Fowler, jr., acting as a purchasing committee on behalf of Francis R. Hart, George E. Warren, James H. Perkins, and George E. Roosevelt, as the reorganization committee under said plan and agreement, be and hereby is in all respects accepted, approved, ratified, and confirmed absolutely, finally and unconditionally."

Pursuant to said order and under date of November 16, 1926, Albert G. Foster, special master, Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver, Old Colony Trust Company, trustees, and Irving Bank-Columbia Trust Company, trustees, executed and delivered a deed, conveying to George E. Roosevelt and J. A. Fowler, jr., as purchasers, all of the properties of Atlanta, Birmingham and Atlantic Railway Company therein fully mentioned and described, subject, however, to the liens, conditions, rights, and liabilities in said deed referred to. After the conveyance aforesaid the said purchasers and their associates, acting under and in accordance with the provisions of the second title, chapter 2, article 6, etc., filed with the secretary of state of the State of Georgia, the petition hereinbefore described for the incorporation of your orator, and pursuant thereto the honorable, the secretary of state of the State of Georgia, as provided in said statutes of the State of Georgia, granted unto the said purchasers and associates, their sucessors and assigns, "the powers, privileges, and franchises of a corporation, with full authority by and under the name of Atlanta, Birmingham & Coast Railroad Company, to exercise the powers, privileges, and franchises of a corporation with rights, powers, privileges, grants, franchises, immunities, and advantages conferred by law in such cases and those prayed for in said petition for incorpora-

11 tion and to maintain and operate the said railroad as prayed for, etc."

Ninth

After the granting of said certificate of incorporation your orator, Atlanta, Birmingham & Coast Railroad Company, under date of November 25, 1926, duly filed its application before the Interstate Commerce Commission in said F. D. 5454 and adopted as its own the application dated April 8, 1926, filed by the reorganization committee as aforementioned and as exhibits with its said application your orator filed the papers required by the Interstate Commerce Commission, including its petition for incorporation and the said certificate of the said secretary of state of the State of Georgia. By its said charter your orator was specifically authorized to issue "all or any part of its preferred stock and/or common stock for the purpose of acquiring and paying for the property and assets conveyed to it by the deed of November 16, 1926, above referred to, and for the purpose of carrying out the above-mentioned plan and agreement of reorganization dated February 23, 1926.

Tenth

After the filing by your orator of the said supplemental application and after the filing by Atlantic Coast Line Railroad of its supplemental application in F. D. 5470, above referred to, the honorable Interstate Commerce Commission, under date of December 21, 1926, entered its second report and order in said F. D. 5454, which said report and order also embraced F. D. 5470, aforesaid,
12 this report and order being the supplementary report and order referred to by the commission in its order of October 26, 1926, above referred to. In its second report the commission stated:

"The applications will be granted, subject, however, to the conditions that the Atlanta, Birmingham & Coast Railroad Company, in setting up its investment account, shall not include therein any amount in excess of the par value of the preferred capital stock authorized to be issued and the amount actually received in consideration of the issuance of its no-par common stock."

The said second order, entered pursuant to said report, dated December 21, 1926, was, in part, as follows:

"* * * Provided, however, and authority to issue said stock is granted upon the express condition that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and *that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.*" (Italics ours.)

Eleventh

Pursuant to the authority granted by the commission in the reports and orders of October 26, 1926, and December 21, 1926, and as of January 1, 1927, the purchasers aforesaid, the said George E. Roosevelt and J. A. Fowler, jr., conveyed to your orator all of the property acquired by them under the deed of November 16, 1926, from the special master, above referred to, in consideration for which your orator issued and delivered to the bondholders' committee
13 certificates for $5,180,300.00 par value of its preferred stock and at the direction and on behalf of the said bondholders' committee, issued to Atlantic Coast Line Railroad Company certificates for 150,000 shares of the voting, no-par common stock of your orator—but only after Atlantic Coast Line Railroad Company had paid or provided for the payment to the creditors of the Atlanta, Birmingham and Atlantic Railway Co. of the items referred to in the agreement of February 23, 1926, constituting liens having priority over the bonds as hereinbefore set forth.

Twelfth

Your orator avers that prior to the year 1923 the Interstate Commerce Commission conducted an exhaustive investigation under the provisions of section 19a of the act to regulate commerce, for the purpose of fixing and determining the value of the property of the said Atlanta, Birmingham & Atlantic Railway Company, then devoted to public use as a common carrier by said company, as required by the act to regulate commerce; in the year 1923, the said commission entered its aforesaid order fixing the value of the carrier property owned by the Atlanta, Birmingham & Atlantic Railway Company, the Alabama Terminal Company and Georgia Terminal Company as of June 30, 1914. Your orator has become the successor of the aforementioned companies in the ownership of the said properties. The commission in its investigation as aforesaid fixed as the final valuation of the said properties as of June 1, 1914, the sum of $29,946,891. That sum when adjusted to additions and betterments and retirements on said property through December 31, 1926, resulted in the valuation of the said properties at $30,933,109. This last mentioned sum your orator has undertaken to set up on its books
14 as the valuation of the said properties at the time of its acquisition of the same, to-wit, January 1, 1927.

Thirteenth

(a) The balance sheet so made up by your orator was duly submitted to the Interstate Commerce Commission and under date of August 3, 1927, Mr. Alexander Wylie, director of the bureau of accounts of the commission in Washington, D. C., wrote Mr. E. L. Greene, your orator's auditor, a letter, copy of which is hereto at-

tached marked "Exhibit A," stating that the entries were not acceptable and that the charge to account 701 "Investment in road and equipment" was excessive in the sum of $22,390,985.21, and directing your orator to reduce the initial charge to this account by said sum of $22,390,985.21. The letter of Director Wylie is referred to and made a part of this bill and this paragraph. Your orator's balance sheet has been set up by using the valuations fixed as aforesaid by the commission and adjusting the same to additions, betterments and retirements thereon. The sum of $2,162,582.34 which the aforementioned letter fixes as the value of 150,000 shares of no-par value common stock of your orator is there stated to have been allowed "in consideration of the payment by that company (Atlantic Coast Line Railroad Company) of current outstanding liabilities of the receiver, reorganization expenses, etc., amounting in the aggregate to $4,080,699.80. This sum, less $1,918,117.46 representing depreciation charges set up in account 775 'Accrued depreciation—Road' and 776 'Accrued depreciation—Equipment' constitutes the $2,162,582.34 referred to above." The result of the act of the commission is
15 that account 701 "Investment in road and equipment" will be shown upon your orator's balance sheet, if set up thereon in the manner required by the commission, at the sum of $6,741,486.40, and if that item is set up in the manner contended for by your orator, it will be shown at $29,471,859.00. A copy of the balance sheet showing in parallel columns the valuation set up in the manner required by the commission and in the manner contended for by your orator, is hereto attached and marked "Exhibit B" and made a part of this bill and of this paragraph.

(b) Your orator avers that this property has a value equal to or in excess of the valuations fixed thereon by the commission as herein set out, plus additions and betterments, less retirements and that until the beginning of the year 1926, the amount which the commission had permitted your orator's successor to set up on its books for the items constituting investment, was about $38,000,000 against the $30,933,109.00 for the corresponding items shown on the balance sheet proposed by it.

(c) The said letter of Director Wylie and the order of the commission hereafter set out will have the effect of requiring your orator to enter upon its books as the value of its property a sum very much less than the value fixed by the commission therefor, and very much less than its real value, and when that value so fixed by the commission has been adjusted to additions, betterments and retirements thereon, the amount by which the sum to be so entered upon its books will be less than that valuation fixed by the commission, is the sum of $22,390,985.21—all of which will be unjust, unreasonable, and unlawful.

Another effect will be that the keeping of your orator's books
16 in this manner will make it impracticable for it to properly ascertain and set up the depreciation account contemplated by

the act to regulate commerce and allowed by the commission, and it will require your orator to set up sums as the value of its several items of property which can not and should not be used in the ascertainment of your orator's rates and charges for services rendered as a common carrier by railroad. Your orator's investment in road and equipment will be set up at only a small part of its value, and if the normal depreciation of say 2% of the value of a certain piece of property upon which depreciation is allowed, is to be ascertained and set up upon orator's books, it will be necessary to take a very much larger per cent of the valuation of that property as set up on the books in order to get the 2% of its actual value—all of which is unjust, unreal, unreasonable, and unlawful.

Fourteenth

Your orator was unwilling to state its account and to set up its balance sheet in the manner required by the aforementioned letter of Director Wylie, dated August 3, 1927. It filed, on November 3, 1927, with the Interstate Commerce Commission, a supplemental petition protesting against the misstatement of its account so directed by the bureau of accounts, and praying that it be granted a hearing and opportunity to appear by counsel and present its oral argument in support of its statement of account made up in accordance with its contentions herein set out; and that the commission enter an order authorizing your orator to set up on its books its investment in accordance with its contention as herein contained, or substantially in accord therewith. In further support of its supplemental petition, your orator filed with the commission a statement of fact in connection with its said supplemental petition.

17

Under date of April 9, 1928, the Interstate Commerce Commission filed its order in F. D. 5454 in response to said supplemental petition, as follows:

"The commission having under consideration the petition filed in the above entitled proceeding by the Atlanta, Birmingham & Coast Railway Company requesting oral argument on said petition, wherein it seeks a supplemental order authorizing it to set up in its books of accounts as the value of the property acquired by it at foreclosure sale of the Atlanta, Birmingham & Atlantic Railway Company entries charging its accounts with the final valuation of the properties acquired, as fixed by us in Valuation Docket No. 1:

"It is ordered that said petition be, and it is hereby denied."

The said order required that applicant state its investment in the property acquired by it at a total of $7,080,872.79, instead of $29,471,859.00, as proposed by your orator, and which proposal is based upon the facts herein alleged.

The order of the commission of April 9, 1922, requiring as it does that your orator record its investment in the property so acquired by it as $7,080,873.79 (the discrepancy between this amount and

the corresponding amount in Exhibit B—$6,741,486.40—is due to adjustments in the assets and liabilities taken over by your orator in the manner herein set out), is entirely different from the condition imposed in the report and order of December 21, 1926.

The report and order of December 21, 1926, required that
18 your orator, in setting up its common stock on its books, should show a figure "not in excess of the amount received therefor." The property of the old Atlanta, Birmingham & Atlantic Railway Company was received by your orator in exchange for its stock, and nothing else was received by it. The order of April 9, 1928, confirming the position taken by the director of the commission's bureau of accounts, requires that your orator shall record on its books as its investment, not the book, or investment cost or value of the property received, but an amount equal to the sums paid by Atlantic Coast Line Railroad Company to creditors of the Atlanta, Birmingham & Atlantic Railway Company, to cover debts due by said old company or its receiver, having priority over its bonds, in accordance with the agreement of February 23, 1926, after deducting from said sum $1,918,117.46 as depreciation as hereinbefore set out.

Your orator alleges that if the language used in the condition contained in the report of the commission, approving the plan of October 10, 1926, is given its ordinary, every-day meaning, then the requirement that your orator—

"* * * in setting up its investment account, shall not include therein any amount in excess of the par value of the preferred stock authorized to be issued and the amount actually received in consideration of the issuance of its no-par common stock,"

is reasonable and valid, but that when the language so used is construed as it is in the order of April 9, 1928, to mean that your orator shall set up at approximately $7,000,000.00 its investment in property, a portion of which was valued by the commission as of 1914
at a figure in excess of $20,000,000.00 to which net addi-
19 tions and betterments have since been made, such construction is unreasonable, erroneous, without foundation in fact, arbitrary, and void.

Fifteenth

Your orator avers that the said order of the commission and its requirements are unlawful, unjust and unreasonable in this, that:

(a) Your orator did not receive the amounts paid out by the Atlantic Coast Line Railroad Company under the terms of and as contemplated in the said plan of reorganization. The said amounts have been and will be paid only as a means to the end that your orator receive the properties formerly owned by Atlanta, Birmingham and Atlantic Railway Company in the manner herein set out. Your orator received no part of the said payments.

(b) Your orator received for its preferred and common stock the property formerly owned by the Atlanta, Birmingham & Atlan-

tic Railway Company and its receiver which was sold at the aforementioned foreclosure sale and which includes its 640 miles of rail line now possessed and operated by it.

(c) The order of the commission in this respect is in conflict with its own acts and proceedings and its own fixation of values of the said property.

(d) This order, if it have any effect, is unnecessarily confusing and requires either the keeping of your orator's books upon an unreal basis or of keeping a double set of books, which is not permitted by the commission.

(e) The said order, if allowed to go into effect, would be
20 in conflict with the requirements of section 20 of the act, which requires the carrier in its annual reports to show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for the same, the dividends paid, surplus fund, if any, etc. It would also be in conflict with the requirement of said section which requires that the annual report shall show "a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet."

(f) The said order, if carried into effect, will require your orator to keep its books upon an unreal, unsubstantial and untrue basis, one which does not reflect the facts as to its investment, or the value of its property for any purpose whatsoever.

(g) The commission is authorized to regulate the form, but not to prescribe the contents of accounts, records and memoranda to be kept by the carriers, subject to the provisions of the act, and this order does undertake to specify as to the contents of your orator's accounts and records.

(h) The commission's order denying your orator's supplemental petition, and undertaking to require your orator to set up its property on its books at amounts which greatly misrepresent and depreciate the actual value of your orator's property, is an incorrect construction and interpretation of its order approving the plan under which your orator acquired said property as has been herein set out.

(i) Your orator avers that, because of each of the matters and things herein alleged, said order of the commission and its construction thereof deprives your orator of its property without due process of law, contrary to the provisions of the fifth amendment of the Constitution of the United States, upon which your orator relies.

21 (j) If the books of your orator have the contents which the commission is undertaking to prescribe, it will be impracticable for your orator or for the commission, from said books, correctly to determine whether or not there has been net railway operating income in excess of 6% of the value of the railway property held for and used by your orator in the service of transportation, and it will be impracticable, if not impossible, to properly apply

the recapture provisions of the act to regulate commerce, and your orator's net railway operating income, if calculated upon the valuations of its property, required to be set up on its books as aforesaid, will be treated with inequality as compared with other carriers, and with injustice, and your orator will be deprived of its property in circumstances in which other carriers similarly situated are not deprived thereof. It will likewise be impracticable to apply the provisions of the recapture clause of the commerce act which permits the carrier to draw from the reserve fund established and maintained by it under the provisions of section 15a of said act, to the extent that its net railway operating income for any year is less than a sum of 6% of the value of the railway property held for and used by it in the service of transportation, and your orator likewise will be unable to properly and adequately set up the reserve fund which is contemplated under section 15a of the act to regulate commerce.

(k) Said order will require an unusual, improper, incorrect, and unreasonable practice as to charges for depreciation on such of your orator's property as is subject to such charge for depreciation; it will require the keeping of books and records in such way as to prevent your orator from adequately or correctly setting up such charge for depreciation on its books and records notwithstanding that it is entitled, and required, under the rules of the commission so to do.

(l) The requirements of the said order can be of no benefit to the public; but will be of great injury to your orator and will require the unreal, incorrect and improper practices herein described.

Sixteenth

Your orator avers that in the event your orator should fail to keep its accounts, records, and memoranda on the books and in the manner prescribed by the commission, or to submit such accounts, records and memoranda as are kept for the inspection of the commission or any of its authorized agents or examiners, your orator will forfeit to the United States the sum of five hundred ($500) dollars for each such offense and for each and every day of the continuance of such offense.

Seventeenth

Your orator further avers that in the event your orator makes any entry in the accounts or any book of accounts, or in any record or memoranda, kept by it, or if it should wilfully neglect to make full, true and correct entries in such accounts, records or memoranda of all facts applicable to its business, or shall keep any other accounts, records or memoranda than those prescribed and approved by the commission, it shall be guilty of misdemeanor, and shall be subject in any court of the United States of competent jurisdiction to a fine of not less than one thousand ($1,000) dollars or more than

five thousand ($5,000) dollars, or imprisonment of its officers
23 or employees for not less than one year or more than three years, or both fine and imprisonment.

Eighteenth

If your orator refuses to comply with the said order, it will be subjected to the terror of punishment under one or both of the above mentioned provisions of the commerce act.

Nineteenth

Your orator cannot keep any other books than those which are lawfully prescribed by the commission. Your orator cannot intelligently or properly keep its books under the construction which the commission has made of its order and without keeping other books it cannot show those investments and valuations which it must show in order to maintain for itself the rates for its freight and passenger service which the law and Constitution contemplate that it should have and which are necessary for it to have in order to maintain its proper and adequate existence and to carry on its affairs as a common carrier, nor will it be able to know what are its duties or its rights or to protect itself against undue demands in the matter of the recapture of its net earnings under the provisions of the commerce act providing for such recapture.

Twentieth

Your orator avers that it can have no relief against the matters and things herein set out, and especially against the said orders of said commission, except through the protection of a court of equity.

24 If your orator does not comply with the said order it will be subjected to suits, or other proceedings at law, for penalties and fines under the terms of the act of Congress known as the interstate commerce act, and the amendments thereto, which would aggregate very great amounts of money.

So your orator must either submit to the said order of April 9, 1928, which it believes and alleges to be unjust, unreasonable, unlawful, and beyond the statutory and constitutional jurisdiction of the commission, for each and all of the reasons herein set out, or it must submit to suits and proceedings for the enforcement and exaction of fines and penalties in the circumstances mentioned. Thus your orator must, unless the protection herein prayed is granted, act in circumstances which do not provide a safe and adequate judicial review of said order; and in so much as any other appeal to the courts can be had only at the risk of paying penalties so great that it may be better to yield to orders of uncertain legality than to ask protection of the law, there will be a denial of that due process of law guaranteed to your orator by the fifth amendment to the Constitution of the United States, upon which your orator relies.

Unless the said orders of the commission or its construction thereof are suspended and set aside your orator will suffer irreparable damages for which there is no adequate remedy at law.

Your orator can have judicial review of said orders guaranteed by the Constitution and contemplated by law, in only a court of equity, and under its protective process.

Twenty-first

Your orator waives discovery under oath of the defendant.

25 Forasmuch, therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that it may obtain from this honorable court the relief to which it is by right and equity entitled, your orator respectfully prays:

A. That it may please the court to grant to your orator a writ of subpœna, to be directed to the defendant, the United States of America, therein and thereby commanding it at a certain time and under a certain penalty to be named therein, to be and appear before this honorable court, then and there to answer all and singular the matters herein set out, but not under oath, answer under oath being expressly waived, and to stand to, abide and perform such orders and decrees as this court may deem meet:

B. And that, in view of the fact that irreparable damage will otherwise ensue to your orator unless the said orders of April 9, 1928, be temporarily stayed or suspended, an order be entered temporarily staying or suspending the operation of the said order of the Interstate Commerce Commission for not more than sixty (60) days from the date of said order of suspension, pending the application for the order of injunction, and that an order be issued restraining the defendant, its officers, agents and employees from enforcing the aforementioned orders of the Interstate Commerce Commission, or any part thereof, and that likewise all persons at interest in said orders be restrained from enforcing the same:

C. That an order issue in the terms of the statutes in such cases made and provided, required notice and service of this bill and of all orders thereon, as is by such statutes prescribed:

26 D. That a day be fixed for a hearing of this cause upon application for temporary staying or suspending the said orders of the Interstate Commerce Commission or its construction thereof, and as well a day be fixed for the hearing of this cause on interlocutory injunction; and that upon said interlocutory injunction issue restraining and enjoining the defendant and all persons at interest, their officers, agents, and employees from enforcing the said orders of the said commission herein complained of; and upon final hearing of this cause said defendant and all persons at interest in said orders of said commission, their officers, agents and employees, be permanently enjoined from enforcing the same:

E. That the said order of April 9, 1928, be held to be invalid and illegal upon each of the grounds herein set out:

F. That an order be entered authorizing your orator to set up its books, in accordance with the allegations hereof:

G. That your orator have such other and further relief as may be meet and proper and that it have general relief.

ATLANTA, BIRMINGHAM & COAST RAILROAD CO.
B. L. BUGG, *President.*

GEORGE B. ELLIOTT,
BRANDON & HYNDS,
ALSTON, ALSTON, FOSTER & MOISE,
Solicitors for Complainants.

27 [*Duly sworn to by B. L. Bugg; jurat omitted in printing.*]

28 *Exhibit A to complaint*

INTERSTATE COMMERCE COMMISSION,
BUREAU OF ACCOUNTS,
Washington, August 3, 1927.

434850
Mr. E. L. GREENE,
Auditor, Atlanta, Birmingham and Coast Railroad Company, Atlanta, Georgia.

DEAR SIR: Receipt is acknowledged of your letter of June 28, 1927, file 56,000, submitting copies of opening entries recording the acquisition of the property of the Atlanta, Birmingham and Atlantic Railroad Company, together with report prepared by Haskins & Sells, setting forth their reasons why the proposed entries should be approved.

The entries submitted are not acceptable in that the initial charge to account 701 "Investment in road and equipment," is based upon a valuation (reproduction cost new) instead of cost. This charge is excessive in the sum of the difference between $24,553,567.55 and $2,162,582.34, or $22,390,985.21, the former sum representing the alleged value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line Railroad in consideration of the payment by that company of current outstanding liabilities of the receiver, reorganization expenses, etc., amounting in the aggregate to $4,080,699.80. This sum less $1,918,117.46, representing depreciation charges set up in account 775, "Accrued depreciation—Road," and 776, "Accrued depreciation—Equipment," constitute the $2,162,582.34 referred to above.

29 The commission's order of October 26, 1926, under Finance Docket No. 5454 and your company's certificate of notification to the commission dated January 10, 1927, explicitly sets forth that the no-par common stock shall be and was actually issued to the Atlantic Coast Line in consideration of that carrier assuming the obligations before mentioned.

While it is true, as stated by Haskins & Sells, that your company did not receive actual cash or property as a result of the action of

the Atlantic Coast Line, your company, however, was directly benefited thereby to the extent of $4,080,699.80. Therefore, it will be necessary for you to consider the sum of $4,080,699.80 as the cash value of the 150,000 shares of no-par stock issued to the Coast Line Railway Company. Assuming, therefore, that the other assets and liabilities are correctly stated in the tentative balance sheet prepared by Haskins & Sells, in compliance with the orders of the commission you are directed to reduce the initial charges to account 701 by $22,390,985.21, the compilation of which is explained in the second paragraph hereof.

As the correction will place the initial charge to investment account on basis of money costs, it is of course proper that the depreciation reserves referred to in the second paragraph hereof should be canceled.

Please submit corrected copies of the opening entries to this bureau for completion of its files.

Yours very truly,

(s.) ALEXANDER WYLIE, *Director.*

30 *Exhibit B to complaint*

Atlanta, Birmingham and Coast Railroad Company

General balance sheet—Assets side, January 1, 1927

Line No.	Item (b)	I. C. C.	A., B. & C.
1	INVESTMENTS		
2	701. Investment in road and equipment (p. 203)	$6,741,486.40	$29,471,859.00
6	705. Miscellaneous physical property (p. 207)	1,262,970.00	1,262,970.00
7	706. Investment in affiliated companies		
8	(a) Stocks (pp. 213 and 214)	122,500.00	122,500.00
10	(c) Notes (pp. 213 and 214)	74,680.00	74,680.00
12	707. Other investments (p. 215)	1,100.00	1,000.00
18	Total investments	8,202,736.40	30,933,109.00
19	CURRENT ASSETS		
20	708. Cash	345,457.97	345,457.97
25	713. Traffic and car service balances receivable	28,314.56	28,314.56
26	714. Net balance receivable form agents and conductors	26,258.41	26,258.41
27	715. Miscellaneous accounts receivable	278,165.45	278,165.45
28	716. Material and supplies	818,583.63	818,583.63
31	719. Other current assets	3,838.75	3,838.75
	Total current assets	1,500,618.77	1,500,618.77
33	DEFERRED ASSETS		
34	720. Working fund advances	2,758.00	2,758.00
37	Total deferred assets	2,758.00	2,758.00
	UNADJUSTED DEBITS		
38	723. Rents and insurance premiums paid in advance	1,122.64	1,122.64
43	727. Other unadjusted debits (p. 219)	176,795.55	176,795.55
	Total unadjusted debits	177,918.19	177,918.19
47	Grand total	9,884,031.36	32,614,403.96

31 *General balance sheet—Liabilities Side, January 1, 1927*

Line No.	Item (b)	I. C. C.	A., B. & C.
1	STOCK		
3	751. Capital stock (p. 220)	$9,240,999.80	$30,073,234.98
6	Total stock	9,240,999.80	30,073,234.98
17	CURRENT LIABILITIES		
19	759. Traffic and car service balance payable	79,107.44	79,107.44
20	760. Audited accounts and wages payable	444,605.73	444,605.73
21	761. Miscellaneous accounts payable	13,760.55	13,760.55
28	768. Other current liabilities	18,308.67	18,308.67
29	Total current liabilities	555,782.39	555,782.39
30	DEFERRED LIABILITIES		
32	770. Other deferred liabilities	3,702.11	3,702.11
33	Total deferred liabilities	3,702.11	3,702.11
34	UNADJUSTED CREDITS		
35	771. Tax liability	7,960.92	7,960.92
39	775. Accrued depreciation—Road (p. 29)		511,252.78
40	776. Accrued depreciation—Equipment (p. 29)		1,399,884.66
42	778. Other unadjusted credits (p. 25)	55,780.14	55,780.14
43	Total unadjusted credits	63,741.06	1,981,864.52
44	CORPORATE SURPLUS		
45	779. Additions to property through income and surplus		
	Total appropriated surplus		
51	784. Profit and loss (debit) balance (p. 30)		
52	Total corporate surplus (deficit)		
53	Grand total	9,864,031.56	32,614,433.99

32 In United States District Court

Order on bill of complaint

The foregoing bill has been presented to the court. On motion of the complainant, it is ordered that the same be filed and subpoena issued and that service be made thereon in accordance with the statutes in such cases made and provided. Complainant does not now move for a temporary restraining order, but reserves the right so to do during the progress of this cause, should occasion appear to require it, and this bill is filed without prejudice to its rights so to do.

This June 14, 1928.

SAML. H. SIBLEY,
Judge United States District Court
for the Northern District of Georgia.

33 In United States District Court

[Title omitted.]

Intervention of Interstate Commerce Commission

To the honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Inter-

state Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

DANIEL W. KNOWLTON.
E. M. REIDY.

34 In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph first of the bill of complaint, said intervening defendant, hereinafter called the commission, admits that the allegations therein contained are true.

II

Answering paragraph second of the bill of complaint, the commission admits for the purposes of this suit that all allegations contained therein are true, except that the commission alleges that the words and figures "June 18, 1919," contained in said paragraph should be "June 18, 1910."

35 III

Answering paragraph third of the bill of complaint, the commission admits that the allegations therein contained are true, except that the commission alleges that the words and figures "2d day" contained in the fifth line of the first subdivision of said paragraph should be "22d day."

IV

Answering paragraph fourth of the bill of complaint, the commission admits that the allegations therein contained are true.

V

Answering paragraphs fifth to twenty-first, inclusive, of the bill of complaint, the commission admits and alleges that on April 8, 1926, Francis R. Hart, George E. Warren, George E. Roosevelt, and

James H. Perkins, representing committees of bondholders of the Atlanta, Birmingham & Atlantic Railway Company, hereinafter called the A., B. & A., filed an application with the commission pursuant to section 1, subdivision 18, of the interstate commerce act, in which the applicants sought a certificate of public convenience and necessity to acquire and operate the lines of railroad and property of the A., B. & A., through a new company, the Atlanta, Birmingham & Coast R. R. Co., complainant herein, and in which application said complainant also sought, under section 20a, subdivision 2, of the interstate commerce act, to issue $5,180,344.07 par value of its preferred stock and 150,000 shares without par value of its common stock, all as alleged in paragraph fifth of the bill of complaint. The commission further admits and alleges that it made and entered and served upon all parties interested in the proceedings before the commission then pending before it numbered Finance Docket 5454, the report and order dated October 26, 1926, and referred to in paragraph seventh of the bill of complaint. The commission further admits and alleges that, pursuant to said application, it made and entered and served upon all the parties interested in the
36 proceedings before it, a second report and order in Finance Docket 5454, dated December 21, 1926, and referred to in paragraph tenth of said bill of complaint. The commission further admits and alleges that on April 12, 1926, the Atlantic Coast Line Railroad Company filed an application, numbered Finance Docket 5470, under paragraph 2 of section 5 of the interstate commerce act, for authority to acquire control of complainant by the purchase of all of its voting common stock in consideration of the payment by the Atlantic Coast Line of current outstanding obligations of the A., B. & A., and of the receiver, together with various foreclosure and reorganization expenses, and for authority to assume said obligations as more fully set forth in the agreement of February 23, 1926, referred to in paragraphs fifth and sixth of said bill of complaint, and that both applications were consolidated and decided in the aforesaid reports and orders of October 26, 1926, and December 21, 1926, which reports and orders are attached hereto and made a part hereof as Exhibits 1 and 2, respectively, to this answer.

The commission further admits and alleges that notice of said applications was given to all interested parties, and published and filed, as required by the provisions of the interstate commerce act; that subsequent to such notice and prior to the making, entering, and serving of said reports and orders of October 26, 1926, and December 21, 1926, the commission conducted the investigation, and accorded to the parties, the full hearing provided for in the interstate commerce act; that at said hearing a large volume of testimony and other evidence, bearing upon the matters covered by said orders of October 26 and December 21, 1926, was submitted to the commission for consideration on behalf of the parties to said proceedings, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed in said proceedings, questions relating

to said matters were fully argued and submitted to the commission for determination on behalf of said parties by their respective counsel, whereupon the commission determined said
37 matters and entered and served upon the petitioner said reports and orders of October 26 and December 21, which included the commission's findings of fact, decision, conclusions, orders, and requirements, in the premises, and that upon the evidence aforesaid, and as shown in and by said reports of October 26 and December 21, heretofore referred to and made a part hereof, the commission made the findings and stated the conclusions, upon which said orders of October 26 and December 21 are based.

Answering particularly allegations contained in paragraphs twelfth and thirteenth of the bill of complaint, the commission admits and alleges that on July 20, 1923, it made and entered a report and order fixing the value of the properties of the Atlanta, Birmingham and Atlantic Railway Company as of June 30, 1914; that complainant attempted to set up on its books the sum of $30,933,109, as representing the valuation of its properties at the time it acquired them, January 1, 1927, after adjustment for additions, betterments, and retirements, and submitted its balance sheet so made up to Mr. Alexander Wylie, director of the commission's bureau of accounts; and that said Director Wylie on August 3, 1927, sent the letter to complainant's auditor, Mr. E. L. Greene, copy whereof is attached to bill of complaint, marked "Exhibit A," which stated that the accounting entries submitted by complainant were not acceptable "in that the initial charge to account 700 'Investment in road and equipment,' is based upon a valuation (reproduction cost new) instead of cost." In this connection, the commission avers that the allegations as to value are incompetent, irrelevant, and immaterial, and that the investment of the complainant has no necessary relation to the value of the property.

Answering particularly paragraph fourteenth of the bill of complaint, the commission admits and alleges that complainant filed with the commission a supplemental petition, in substance asking that it be authorized to set up the value of its properties in its books of account upon the basis of the valuation fixed by
38 the commission for the properties acquired from its predecessor and requesting oral argument thereon, and that the commission denied said petition by its order of April 19, 1928, as set forth in said paragraph. The commission denies that its said order of April 9, 1928, requires any act by complainant which is inconsistent with the requirements of its said earlier reports and orders.

Answering further allegations contained in paragraph fourteenth of the bill of complaint, the commission alleges that the words and figures "April 9, 1922," contained in the first line of the fourth subdivision of said paragraph should be "April 9, 1928."

Answering further paragraph fifteenth of the bill of complaint, the commission denies each of and all the conclusions therein con-

tained and the allegations of fact upon which such conclusions are based.

The commission further alleges that its aforesaid findings and conclusions were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the commission in said proceedings as aforesaid.

The commission further alleges that, in making said reports and orders of October 26 and December 21 and said order of April 9, 1928, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention, on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The commission further alleges that neither said orders of October 26 and December 21, 1926, nor said order of April 9, 1928, was made either arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it, that in making said order it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the commission denies each of and all the allegations to the contrary
39 contained in said bill of complaint.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in said bill of complaint in so far as they conflict either with the allegations herein, or with either the findings or conclusions of fact included in said reports of October 26 and December 21, 1926. The commission particularly denies that, as alleged in paragraphs twentieth and twenty first of the bill of complaint, the petitioner will suffer either irreparable loss or injury, or suffer either loss or injury of any kind, if said order of April 9 is not annulled and set aside by the court.

All of which matters and things the commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By E. M. REDY, *Attorney.*

D. W. KNOWLTON,
Of Counsel.

[*Duly sworn to by Thomas F. Woodlock; jurat omitted in printing.*]

40 In United States District Court

Order enlarging time

Filed July 18, 1928

On motion of counsel for the United States and for good cause shown it is ordered that the time in which the United States

defendant, may file its answer or other pleading to the bill of complaint be, and the same is, hereby enlarged to and including Monday, August 6, 1928.

July 18, 1928.

SAML. H. SIBLEY,
United States District Judge.

41 In United States District Court

[Title omitted.]

Answer of the United States to the complaint.

First defense.

United States for the first defense to the complaint filed herein against it says:

"The District Court is without jurisdiction to entertain the petition. The action of the Interstate Commerce Commission in denying by its order entered April 9, 1928, the supplemental petition of the Atlanta, Birmingham & Coast Railroad Company on which it sought a supplemental order authorizing it to set up in its books of accounts as the value of the property acquired by it at the foreclosure sale of the Atlanta, Birmingham & Atlantic Railway Company entries charging its accounts with the final valuation of the properties acquired, as fixed by the commission in Valuation Docket No. 1 (as reported in 75 Interstate Commerce Commission Reports at page 36 et seq.), is negative only and does not constitute an order of the commission within the meaning of the commerce court act of June 18, 1910 (c. 309, 36 Stat. 539) and urgent deficiencies act of October 22, 1913 (c. 32, 38 Stat. 219, 221).

"Wherefore defendant moves to dismiss the complaint and prays that an appropriate order may be entered."

42 Second defense.

United States for the second defense to the complaint filed herein against it says:

"The District Court is without jurisdiction to entertain the complaint. The prayer of the complaint is that the order of April 9, 1928, which denied the supplemental petition be adjudged invalid and illegal upon each of the grounds averred in the complaint and that an order be entered by the court authorizing the complainant to set up its books 'in accordance with the allegations hereof,' which is a prayer for a declaratory or advisory judgment or decree of the court on the subject-matter regardless of the action of the commission.

"Wherefore defendant moves to dismiss the complaint and prays that an appropriate order may be entered."

Third defense

United States for the third defense to the complaint filed herein against it says:

"The District Court is without jurisdiction to entertain the complaint. The commission was authorized, under paragraph (18) of section 1 and paragraph (21) of section 20a of the interstate commerce act as amended by the transportation act of 1920 (c. 91, 41 Stat. 477, 494) and under other provisions of those acts, if in its judgment the facts and circumstances as shown by the evidence justified such action, to deny the application of April 8, 1926, and the supplemental petition of November 3, 1927, in whole or in part; and the complainant, having failed to secure the relief to the full extent prayed in its application and supplemental petition from the terms and provisions of the statutes which have become absolute against the complainant, the court is without jurisdiction to substitute its judgment for the judgment of the commission and to grant such application and petition and relieve the complainant from the terms and provisions of the statute."

43 Fourth defense

United States for the fourth defense to the complaint filed herein against it says:

"Having invoked the jurisdiction of the commission by its application or petition wherein the complainant sought a supplemental order authorizing it to set up in its books of accounts as the value of the property acquired by it at the foreclosure sale of the Atlanta, Birmingham & Atlantic Railway Company entries charging its accounts with the final valuation of the properties acquired, as fixed by the commission in Valuation Docket No. 1 (as reported in 75 Interstate Commerce Commission Reports at page 643, et seq.), the complainant is estopped to invoke the jurisdiction of the District Court under the urgent deficiencies act for the purpose of cancelling and enjoining the order of the commission on the ground that the commission was without jurisdiction to hear and determine the application in the manner and form in which the commission heard and determined the application.

"Wherefore defendant moves to dismiss the complaint and prays that an appropriate order may be entered."

Fifth defense

United States for the fifth defense to the complaint filed herein against it says:

"The complainant is estopped to maintain the action which is in the nature of a suit to set aside an alleged order of the Interstate Commerce Commission. The complainant applied to the commission for the authority granted by the report and orders of October

26, 1926, and December 21, 1926, which the complainant accepted and executed. Following the letter of August 3, 1927, of Alexander Wylie, director, bureau of accounts, addressed to E. L. Greene, auditor, Atlanta, Georgia, the supplemental petition filed with the commission on November 3, 1927, prayed for an order providing in substance that the complainant be relieved from certain of the conditions of the previous orders. To grant the prayer of the complaint will have the effect of decreeing to complainant the benefit and advantage of all of those portions of the orders which were favorable and desirable to complainant and cancelling and annulling the conditions and safeguards upon which the orders were issued. The complainant is estopped to maintain the suit to cancel the conditions and safeguards of indivisible orders which it accepted and executed and which stand or fall in their entirety.

"Wherefore defendant moves to dismiss the complaint and prays that an appropriate order may be entered."

Sixth defense

The United States for the sixth defense to the complaint filed herein against it says:

"The complaint with the exhibits attached thereto and made a part thereof is without equity on its face and does not state any cause of action against the United States.

"Wherefore defendant moves to dismiss the complaint and prays that an appropriate order may be entered."

Seventh defense

The United States for the seventh defense to the complaint filed herein against it says:

"I II. Except as shown in the two reports of the Interstate Commerce Commission hereinafter referred to defendant has no knowledge of the facts and conclusions alleged in paragraphs first and second, it neither admits nor denies the same and if they become material upon the hearing defendant will require strict proof thereof with this exception: defendant denies the suit is one arising under the Constitution and laws of the United States and that it is a proceeding authorized by the commerce court act of June 18, 1910 (c. 309, 36 Stat. 539), and urgent deficiencies act of October 22, 1913 (c. 32, 38 Stat. 219).

"III VII. Except as appears from the report and certificate and order of the Interstate Commerce Commission of October 26, 1926 (no copy of which is attached to the complaint), defendant has no knowledge of the facts and conclusions alleged in paragraphs third, fourth, fifth, sixth, and seventh, inclusive, in manner and form as alleged, it neither admits nor denies the same and in so far as they may become material upon the hearing defendant will require strict proof thereof with this exception: defendant admits that in its report

of October 26, 1926, the commission made the statements alleged in paragraph seventh but alleges that such statements are mere excerpts or fragments from the report and do not constitute or reflect the substance of the report and certificate and order of the commission in its entirety; the full report and certificate and order of October 26, 1926, Finance Docket 5454, Reorganization and Control of Atlanta, Birmingham & Atlantic Railway Company, the contents of which are well known to complainant, is officially reported as 117 Interstate Commerce Commission Reports page 181, et seq., which for greater certainty is made a part hereof by reference as completely as if fully incorporated herein.

46 "VIII–XI. Except as appears from the report and order of the Interstate Commerce Commission of December 21, 1926 (no copy of which is attached to the complaint), defendant has no knowledge of the matters and things alleged in paragraphs eighth, ninth, tenth, and eleventh, inclusive, it neither admits nor denies the same in manner and form as alleged and in so far as they may become material upon the hearing defendant will require strict proof thereof with these exceptions: defendant admits (a) that in the report of December 21, 1926, the commission made the statement alleged in paragraph tenth, but alleges that such statement is a mere excerpt or fragment from the report and does not constitute or reflect the substance of the report of the commission in its entirety; the full report of December 21, 1926, Finance Docket 5454, Reorganization and Control of Atlanta, Birmingham & Atlantic Railway Company, the contents of which are well known to complainant, is officially reported as 117 Interstate Commerce Commission Reports page 439, et seq., which for greater certainty is made a part hereof by reference as completely as if fully incorporated herein; (b) that in the order of December 21, 1926, the commission included the provision alleged in paragraph tenth, but alleges that the provision is a mere excerpt or fragment from the order of December 21, 1926, and does not constitute or reflect the full substance or purport of the order; for greater certainty defendant refers to the order in its entirety the contents of which are well known to the complainant.

47 "XII–XIV. Except as shown in the foregoing (a) report and certificate and order and (b) report and order of the Interstate Commerce Commission defendant has no knowledge of the facts and conclusions alleged in paragraphs twelfth, thirteenth, and fourteenth, inclusive, in manner and form as alleged, with these exceptions: Defendant admits (a) the letter of August 3, 1927, of Alexander Wylie, director, bureau of accounts, to E. L. Greene, Atlanta, Georgia, and, subject to verification, that Exhibit A to the complaint is a true copy; (b) the complainant on November 3, 1927, filed the supplemental petition (no copy of which is attached to the complaint) and, under date April 9, 1928, the commission denied the petition.

"XV. Defendant denies the facts and conclusions alleged in paragraph fifteenth and each and every part of the same in manner and form as alleged and alleges that the allegations of paragraph fifteenth are argumentative.

"XVI–XXI. Defendant denies the facts and conclusions alleged in paragraphs sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first, inclusive, in manner and form as alleged, with these exceptions; defendant admits (a) that complainant can not keep any books other than those which are lawfully prescribed by the commission; (b) that for failure to keep its books in the manner prescribed by the commission complainant will be liable for forfeitures; but defendant alleges that the statute in such case made and provided and not the order of the commission prescribes and imposes the penalties and forfeitures from which the court may not relieve the complainant.

48 "Defendant alleges that the facts and conclusions set forth in the complaint and sought to be put in issue before the court were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the interstate commerce act. In its reports in writing with respect thereto, made after full hearing and after due notice to all of the parties, which state its conclusion, together with its decision and order the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues made by the parties.

"Defendant specifically denies (a) any fact or facts alleged in the complaint, or any part of the same, which deny, or which seek to deny, any fact or facts found by the commission; (b) any fact or facts alleged in the complaint, or any part of the same, which are inconsistent with any fact or facts found by the commission; (c) any and all inferences of fact from any particular fact or facts alleged in the complaint, or any part of the same, which seek to deny, or which are inconsistent with any fact or facts found by the commission; (d) any fact or facts alleged in the complaint, or any part of the same, which set up, or which seek to set up, matters and things which were not before the commission; (e) any fact or facts alleged in the complaint, or any part of the same, which attack or which seek to attack the action of the commission, and to show facts other than those the commission has found and declared; (f) any allegations in the complaint, or any part of the same, which allege that facts were found by the commission in its reports which, as shown on the face thereof, were not so found; (g) any conclusions of law alleged

49 and insisted upon in the complaint, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission; (h) each and every allegation in the complaint contained not herein specifically admitted or denied.

"Wherefore having fully answered, defendant prays that the complaint be dismissed at the cost of the complainant and for such other and further order as may be appropriate."

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
CLINT W. HAGER,
United States Attorney.

50 [*Duly sworn to by Blackburn Esterline; jurat omitted in printing.*]

51 [Order setting cause omitted in printing.]

52 In United States District Court

Petition to take testimony and order allowing same

Filed Sept. 18, 1928

Now comes the Atlanta, Birmingham & Coast Railroad Company, and respectfully represents unto this honorable court that this cause is pending in this court, to be heard before three judges, and that it is necessary for the plaintiff to take testimony from two of its officers, Mr. B. L. Bugg, president, and Mr. E. L. Greene, auditor.

It is undesirable to take the testimony of these witnesses in open court before the three judges; that procedure will unnecessarily prolong the trial of the cause.

Wherefore, petitioner respectfully prays that an order be entered allowing your petitioner to take testimony of the aforementioned witnesses before a commissioner duly authorized to take such evidence, said evidence to be used in the trial of said cause before said court.

BRANDON & HYNDS,
ALSTON, ALSTON, FOSTER & MOISE,
Counsel for A., B. & C. R. R. Co.

53 [*Duly sworn to by Robert C. Alston; jurat omitted in printing.*]

ORDER

The foregoing petition for the taking of testimony has been read and considered.

It is ordered that complainant, Atlanta, Birmingham & Coast Railroad Company, be and it is hereby authorized to take the testimony of B. L. Bugg and E. L. Greene, or either of them, before a commissioner or a notary public, at 1208 Citizens & Southern Bank Building, Atlanta, Georgia.

Reasonable notice of the time and place of the taking of such testimony will be given to counsel of record in this cause for the United States and to counsel of record in this cause for the Interstate Commerce Commission.

Sept. 18, 1928.

SAML. H. SIBLEY,
U. S. Judge.

54 In United States District Court

Stipulation Re Transcript of Record

Filed February 7, 1930

On the hearing of the application for permanent injunction the complainant has offered in evidence a certified copy of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission in Finance Docket 5454, Reorganization and Control of Atlanta, Birmingham & Atlantic Railroad Company, consisting of a total of approximately 166 pages of the oral testimony (144 pages at May 20, 1926, hearing, and 22 pages at February 4, 1929, hearing) and 45 exhibits (43 exhibits at the former hearing and 2 exhibits at the latter) and the same having been received in evidence by the court; and the defendant and intervening defendant having seasonably filed and served with their notice of appeal a condensed narrative of the transcript of the evidence and proceedings for the determination of the appeal; and now for the purpose of reducing and settling the record of appeal pursuant to equity rule No. 75, the parties by their respective counsel (and with the approval of the court), stipulate:

(1) The within attached narrative is a true and correct transcript form of all of the oral testimony introduced at the hearings before the commission deemed necessary for the determination of this appeal, as the same is contained in the official typewritten transcript in the proceedings referred to.

(2) The narrative shall be substituted for the original transcript of the oral testimony so certified by the commission, shall be incorporated in the record on appeal and shall have the same force and effect upon the appeal as the original testimony.

(3) The following exhibits in the certified copy of the transcript, 17 in number, Exhibits 1, 2, 3, 5, 6, 12, 13, 32, 33, 34, 35, 36, 37,
55 38, 43, and Exhibits A and B, shall be incorporated in the record on appeal.

(4) Exhibits 39, 40, 41, and 42 (consisting of maps) need not be printed but are to be sent up to the Supreme Court as original exhibits, to which either party or counsel may refer with like effect as if printed in the transcript of the record.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.
F. B. GRIER,
BRANDON & HYNDS,
CARL H. DAVIS,
ROBT. C. ALSTON,
Solicitors for Atlanta, Birmingham & Coast Railroad Company.

ORDER

It is ordered that the within and attached stipulation and narrative be and the same are hereby approved; and in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States the clerk is directed to proceed in accordance therewith.

SAML. H. SIBLEY,
United States District Judge.

56 District Court of the United States for the Northern District of Georgia, Northern Division

Birmingham Trust and Savings Company, complainant, v. Atlanta, Birmingham & Atlantic Railway Company, defendant. Consolidated cause in equity No. 156 and the constituent causes in equity Nos. 156, 188, 187 and 190

Exhibit 1—Decree of foreclosure and sale

[Stamped:] Interstate Commerce Commission. Ex. No. 1. Applicant's Docket No. 5454, 5470. Date, May 20, 1926.

At a term of the District Court of the United States for the Northern District of Georgia, Northern Division, in the city of Atlanta, State of Georgia, on the 30th day of April, 1926.

Present: Hon. SAMUEL H. SIBLEY, United States District Judge.

BIRMINGHAM TRUST AND SAVINGS COMPANY, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, defendant	Consolidated cause in equity No. 156
BIRMINGHAM TRUST AND SAVINGS COMPANY, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, defendant	In equity No. 156
OLD COLONY TRUST COMPANY, TRUSTEE, complainant v. ATLANTIC & BIRMINGHAM RAILWAY COMPANY, Atlanta, Birmingham & Atlantic Railway Company, Columbia Trust Company, Trustee, and The Equitable Trust Company of New York, Trustee, defendants	In equity No. 188

COLUMBIA TRUST COMPANY (NOW IRVING BANK-COLUMBIA Trust Company), Trustee, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, B. L. Rugg, as Receiver of Atlanta, Birmingham and Atlantic Railway Company, Old Colony Trust Company, Trustee, and the Equitable Trust Company of New York, Trustee, defendants	In equity No. 187
THE EQUITABLE TRUST COMPANY OF NEW YORK, TRUSTEE, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY; B. L. Bugg, as Receiver of Atlanta, Birmingham & Atlantic Railway Company; Birmingham Trust and Savings Company; Columbia Trust Company, Trustee, defendants	In equity No. 190

DECREE OF FORECLOSURE AND SALE

The above-entitled causes and each of them came on to be heard at this term and the same having been argued by counsel and submitted to the Court, the Court, being fully advised in the premises, upon consideration thereof,

Finds, orders, adjudges and decrees as follows:

Article I. Jurisdictional facts and citizenship of parties

(1) This Court has jurisdiction of all the parties to the above-entitled causes and each of them, and of the subject matter therein involved.

(2) This decree so far as applicable in each of the above-entitled causes shall at all times be treated as of the same force and effect as if entered as a decree in each of the said causes, all of which, by orders heretofore entered, have been consolidated.

(3) At all times hereinafter mentioned, Birmingham Trust and Savings Company, the complainant in equity cause No. 156, was and still is a corporation duly organized and existing under the laws of the State of Alabama and a citizen of said State and a resident and inhabitant thereof.

(4) At all times hereinafter mentioned, defendant, Atlantic & Birmingham Railway Company, was and still is a railroad corporation duly organized under the laws of the State of Georgia and a citizen of said State and a resident and inhabitant thereof.

(5) At all times hereinafter mentioned, defendant, Atlanta, Birmingham & Atlantic Railway Company was and still is a railroad

corporation duly organized under the laws of the State of Georgia and a citizen of said State and a resident and inhabitant thereof, having its principal place of business in the city of Atlanta, in Fulton County in said State, and owning and operating a railroad in said State and in the State of Alabama and owning certain property in the State of Florida.

(6) At all times hereinafter mentioned, Old Colony Trust Company was and still is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and a citizen and resident of said Commonwealth and was and is duly authorized and empowered to hold in trust the property conveyed to it in trust under and by virtue of the first mortgage or deed of trust and the supplemental mortgage or deed of trust of said Atlantic & Birmingham Railway Company dated, respectively, January 1, 1904, and September 3, 1904 (hereinafter more particularly described in paragraph (11) hereof and, unless the context otherwise indicates, collectively referred to as the first mortgage), and to execute the trusts set forth and declared therein.

(7) At all times hereinafter mentioned, the Equitable Trust Company of New York was and still is a corporation duly organized and existing under the laws of the State of New York and a citizen and resident of said State and was and is duly authorized and empowered to hold in trust the property conveyed to it in trust under and by virtue of the first and refunding mortgage of said Atlanta, Birmingham & Atlantic Railway Company dated November 1, 1915, and the several supplemental mortgages of said Atlanta, Birmingham & Atlantic Railway Company (hereinafter more particularly described in paragraph (16) hereof and, unless the context otherwise indicates, collectively referred to as the first and refunding mortgage), and to execute the trusts set forth and declared therein.

(8) At all times hereinafter mentioned, Irving Bank-Columbia Trust Company (formerly known as and hereinafter sometimes called Columbia Trust Company, its name having been changed to Irving Bank-Columbia Trust Company pursuant to the merger of the Irving National Bank into it, but its corporate existence not having been changed by such merger), was and still is a corporation duly organized and existing under the laws of the State of New York and a citizen and resident of said State and was and is duly authorized and empowered to hold in trust the property conveyed to it in trust under and by virtue of the fifteen-year five per cent income mortgage and deed of trust of said Atlanta, Birmingham & Atlantic Railway Company dated November 1, 1915, and the several supplemental mortgages of said Atlanta, Birmingham & Atlantic Railway Company (hereinafter more particularly described in paragraph (18) hereof and, unless the context otherwise indicates, collectively referred to as the income mortgage), and to execute the trusts set forth, and declared therein.

(9) At all times hereinafter mentioned, defendant, B. L. Bugg, was and still is a citizen and resident of the State of Georgia, and is

the duly appointed, qualified, and acting receiver of defendant, said Atlanta, Birmingham & Atlantic Railway Company, and is in possession of and operating the railroads, properties, and assets of said defendant.

(10) The matter in controversy in each of the above-entitled causes exceeds the sum or value of $5,000, exclusive of interests and costs, and the above-entitled causes, and each of them, are controversies in the nature of civil suits relative to properties of which this court has assumed jurisdiction and control and which are now in its possession and being administered by it, and the above-entitled causes are suits to enforce legal or equitable remedies upon or in respect of such properties.

Article II. First mortgage

(11) On or about January 1, 1904, said Atlantic & Birmingham Railway Company, being thereunto duly authorized by law and pursuant to due corporate action of its stockholders and directors, duly authorized the creation and issue of its first mortgage five per cent 5/30 gold coupon bonds (hereinafter sometimes called the first mortgage bonds), to be issued at not exceeding the rate of $12,000 per mile for the number of miles of completed standard gauge railroad owned or acquired by said Atlantic & Birmingham Railway Company, to be dated as of January 1, 1904, to be payable January 1, 1934, and to bear interest at the rate of five per cent per annum; and to secure the same, for due consideration, said Atlantic & Birmingham Railway Company duly made and executed under its corporate seal and delivered to Old Colony Trust Company, as trustee, a certain indenture in the nature of a mortgage deed of trust, dated January 1, 1904 (hereinafter sometimes called the first mortgage) wherein and whereby said Atlantic & Birmingham Railway Company transferred and conveyed to said Old Colony Trust Company, as trustee, upon the uses and trusts in the first mortgage set forth all the property therein described. Subsequently on or about September 3, 1904, said Atlantic & Birmingham Railway Company, being thereunto duly authorized by law and pursuant to due corporate action, duly made and executed under its corporate seal and delivered to said Old Colony Trust Company, as trustee under said mortgage deed of trust, dated January 1, 1904, a certain indenture in the nature of a supplemental mortgage deed of trust, dated September 3, 1904, wherein and whereby said Atlantic & Birmingham Railway Company, as additional security for the payment of the principal and interest of the first mortgage bonds and coupons issued or which might be issued under and secured by the first mortgage, transferred and conveyed to said Old Colony Trust Company, as trustee, upon the uses and trusts in said mortgage deed of trust dated January 1, 1904, set forth certain additional property more particularly described in said supplemental mortgage. Exhibits A and B to the bill of complaint of said Old Colony Trust Company, as trustee, filed

in equity cause No. 188 as aforesaid, are true copies of said mortgage deed of trust dated January 1, 1904, and said supplemental mortgage dated September 3, 1904, respectively. Said mortgage deed of trust and said supplemental mortgage were made, executed, and delivered in all respects in conformity with law and were thereafter duly recorded and filed in accordance with and as required by law, and the trustee therein named duly accepted the trusts therein and thereby created and has since continuously been and now is the trustee of said mortgage deed of trust, dated January 1, 1904.

(12) Thereafter said Atlantic & Birmingham Railway Company, being thereunto duly authorized by law and pursuant to due corporate action, did duly execute under its corporate seal in all respects as provided in said mortgage deed of trust, dated January 1, 1904, and said Old Colony Trust Company, as trustee under said mortgage deed of trust, did duly certify and deliver $4,000,000 principal amount of first mortgage bonds, all of which bonds are now issued and outstanding under and secured by said mortgage deed of trust, dated January 1, 1904, and said supplemental mortgage, and are in the hands of bona fide purchasers for value and are the lawfully created, valid, and existing obligations of said Atlantic & Birmingham Railway Company.

Article III. Acquisition of properties by Atlanta, Birmingham & Atlantic Railway Company

(13) On or about the 12th day of April, 1906, under the authority of the laws of the State of Georgia and pursuant to due corporate action of both companies, an agreement was entered into between defendant, said Atlantic & Birmingham Railway Company and Atlanta, Birmingham and Atlantic Railroad Company, a railroad corporation duly organized under the laws of the State of Georgia and having its principal place of business in the city of Atlanta, in Fulton County, in said State, pursuant to which agreement and corporate action said Atlanta, Birmingham and Atlantic Railroad Company acquired all the franchises and property of the said Atlantic & Birmingham Railway Company, subject to the lien of the first mortgage of said Atlantic & Birmingham Railway Company. No adjudication is now made, however, as to whether or not such agreement and action or any other corporate action of said companies, or either of them, constituted a merger or consolidation of said companies.

(14) Prior to the time of the transfer and conveyance referred to in the preceding paragraph, and on or about January 1, 1906, said Atlanta, Birmingham and Atlantic Railroad Company, being thereto duly authorized by law and pursuant to due corporate action of its stockholders and directors, duly authorized the creation and issue of its first mortgage gold coupon bonds in the aggregate amount of thirty million dollars ($30,000,000) and, to secure the same, duly

made under its corporate seal and delivered to said Old Colony Trust Company, as trustee, a certain indenture in the nature of a mortgage deed of trust, dated January 1, 1906, by which it transferred and conveyed to said Old Colony Trust Company, as trustee, all the railroad properties, equipment, franchises, and other property which said Atlanta, Birmingham and Atlantic Railroad Company then owned. Subsequently, and on or about May 6, 1906, said Atlanta, Birmingham and Atlantic Railroad Company, being thereto duly authorized by law and pursuant to due corporate action of its stockholders and directors, duly made and executed under its corporate seal and delivered to said Old Colony Trust Company, as trustee, under said mortgage deed of trust dated January 1, 1906, a certain indenture of mortgage, dated May 12, 1906, wherein and whereby said Atlanta, Birmingham and Atlantic Railroad Company, as additional security for the principal and interest of the bonds and coupons which might be issued under and secured by said mortgage deed of trust dated January 1, 1906, transferred and conveyed to said Old Colony Trust Company, as trustee under said mortgage deed of trust dated January 1, 1906, all the railroad property formerly owned by defendant, said Atlantic & Birmingham Railway Company, including the property covered by the lien of the first mortgage of said Atlantic & Birmingham Railway Company, which had been acquired by said Atlanta, Birmingham and Atlantic Railroad Company, pursuant to said agreement as hereinbefore in paragraph (13) set forth. Said transfer and conveyance was expressly made subject, however, to the lien of the aforesaid Atlantic & Birmingham Railway Company first mortgage.

(15) Thereafter default occurred under said mortgage deed of trust dated January 1, 1906, made by said Atlanta, Birmingham and Atlantic Railroad Company to said Old Colony Trust Company, as trustee, and, on or about March 15, 1909, said Old Colony Trust Company, as trustee, filed its bill of complaint in the Circuit Court of the United States for the Northern District of Georgia, praying among other things for the foreclosure of said mortgage deed of trust dated January 1, 1906. Thereafter, on or about July 5, 1913, a foreclosure decree was entered by said court foreclosing said mortgage deed of trust dated January 1, 1906, and directing that the properties subject to the lien thereof be sold, subject, however, to the lien of the first mortgage of said Atlantic & Birmingham Railway Company to the extent that said properties were subject to said lien. In consummation of a sale made pursuant to said foreclosure decree, the properties of said Atlanta, Birmingham and Atlantic Railroad Company were transferred and conveyed to defendant, said Atlanta Birmingham & Atlantic Railway Company, by deed dated October 16, 1914. Said transfer and conveyance was expressly made subject, however, to the lien of the first mortgage of said Atlantic & Birmingham Railway Company to the extent that said properties were subject to said lien.

Article IV. First and refunding mortgage

(16) On or about November 1, 1915, said Atlanta, Birmingham & Atlantic Railway Company, being thereunto duly authorized by law, and pursuant to due corporate action of its stockholders and directors, duly authorized the creation and issue of its first and refunding mortgage gold bonds (hereinafter sometimes called the first and refunding bonds) to an aggregate principal amount not to exceed fifteen million dollars ($15,000,000) at any time outstanding, to be dated as of November 1, 1915, to be payable November 1, 1945, and to bear interest at the rate of not exceeding six per cent per annum; and to secure the same for due consideration said Atlanta, Birmingham & Atlantic Railway Company duly made, executed under its corporate seal, acknowledged and delivered to said The Equitable Trust Company of New York, as trustee, a certain indenture known as its first and refunding mortgage and deed of trust, dated November 1, 1915 (hereinafter sometimes called the first and refunding mortgage), but actually executed and delivered on or about February 7, 1916, by which said Atlanta, Birmingham & Atlantic Railway Company transferred and conveyed to said The Equitable Trust Company of New York, as trustee, the property therein described, including all of the property then owned by said Atlanta, Birmingham & Atlantic Railway Company; subject, however, to the lien and encumbrance of the first mortgage, but only in so far as the first mortgage might attach to the properties covered by the lien of the first and refunding mortgage. Exhibit A to the bill of complaint of said The Equitable Trust Company of New York, as trustee, filed in equity cause No. 190, is a true copy of the first and refunding mortgage. Subsequently, and on or about August 23, 1917, October 4, 1917, June 20, 1918, July 9, 1918, September 18, 1920, and November 10, 1920, respectively, said Atlanta, Birmingham & Atlantic Railway Company, being thereunto duly authorized by law and pursuant to due corporate action, as additional security for the payment of the principal and interest of the first and refunding bonds issued or which might be issued under and secured by the first and refunding mortgage, duly made and executed under its corporate seal and delivered to said The Equitable Trust Company of New York, as trustee under the first and refunding mortgage, certain supplemental mortgages, dated, respectively, August 23, 1917, October 4, 1917, June 20, 1918, July 9, 1918, September 18, 1920, and November 10, 1920, wherein and whereby said Atlanta, Birmingham & Atlantic Railway Company transferred and conveyed to said The Equitable Trust Company of New York, as trustee under the first and refunding mortgage, certain parcels of real estate and other properties therein described. Exhibits B, C, D, E, F, and G, introduced in evidence and made a part of the record of the testimony taken on behalf of said The Equitable Trust Company of New York, as trustee, at the hearing before the special master

on or about November 27, 1923, are true copies of said several supplemental mortgages. On or about August 11, 1916, said Atlanta, Birmingham & Atlantic Railway Company duly pledged and delivered to said The Equitable Trust Company of New York, as trustee as aforesaid, certificates representing one thousand shares of the capital stock of Eastern Realty Company received by said Atlanta, Birmingham & Atlantic Railway Company as consideration for certain property duly released from the lien of the first and refunding mortgage on or about said date; said shares are now held by said The Equitable Trust Company of New York under and subject to the lien of the first and refunding mortgage. From time to time subsequent to the date of the execution and delivery of the first and refunding mortgage funds representing the proceeds of insurance on property subject to the lien thereof have been received by said The Equitable Trust Company of New York, as trustee as aforesaid; the amount of said funds held on April 23, 1926, by said trustee as aforesaid, with interest accrued thereon to April 1, 1926, is $24,647.52.

The first and refunding mortgage and said supplemental mortgages were executed and delivered in all respects in conformity with law, and the trustee therein named duly accepted the trusts therein and thereby created, and has since continuously been and now is the trustee of the first and refunding mortgage, and the first and refunding mortgage and said supplemental mortgages were, subsequent to the date of their execution and delivery, duly recorded in accordance with and as required by law in every office in which they were so required by law to be recorded in the several counties wherein any of the lines of railroad or real or personal property subject to the lien of the first and refunding mortgage and said supplemental mortgages were or are situated.

(17) From time to time subsequent to the date of the execution and delivery of the first and refunding mortgage said Atlanta, Birmingham & Atlantic Railway Company, being thereunto duly authorized by law and pursuant to due corporate action, did duly execute under its corporate seal in all respects as provided in the first and refunding mortgage, and said The Equitable Trust Company of New York, as trustee under the first and refunding mortgage, did duly certify, authenticate, and deliver to said Atlanta, Birmingham & Atlantic Railway Company $1,424,000 principal amount of first and refunding bonds bearing interest at the rate of five per cent per annum; $599,000 principal amount of said first and refunding bonds, though authenticated by the trustee under the first and refunding mortgage and by it delivered to said Atlanta, Birmingham & Atlantic Railway Company, remained unissued and in the possession of said Atlanta, Birmingham & Atlantic Railway Company at the time of the appointment of the receiver in equity cause No. 156, and are now unissued in the possession of said receiver; and said $599,000 principal amount of first and refunding bonds are not now

outstanding under or entitled to the benefits of the first and refunding mortgage; the receiver of said Atlanta, Birmingham & Atlantic Railway Company is authorized and directed to deliver said $599,000 principal amount of first and refunding bonds to the trustee under the first and refunding mortgage for cancellation and cremation, and said trustee is authorized and directed to cancel and cremate the same. The remaining $825,000 principal amount of said first and refunding bonds were duly issued and pledged by said Atlanta, Birmingham & Atlantic Railway Company as security for certain debts or obligations of said Atlanta, Birmingham & Atlantic Railway Company, as follows:

(a) On or about March 23, 1920, $125,000 principal amount of said bonds were pledged with Birmingham Trust and Savings Company as security for a loan made on said date in the principal amount of $90,000, with interest thereon at the rate of 6% per annum. Interest on said loan has been paid to March 8, 1921.

(b) On or about July 19, 1920, $405,000 principal amount of said bonds were pledged with the National Bank of Commerce in New York as security for a loan made on said date in the principal amount of $275,000, with interest thereon at the rate of 7% per annum. Interest on said loan has been paid to January 31, 1921.

(c) On or about August 13, 1920, $295,000 principal amount of said bonds were pledged with the United States Government Treasury Department as security for a loan made on said date in the principal amount of $200,000, with interest thereon at the rate of 6% per annum. On or about March 29, 1926, the balance due on said loan for principal and interest was paid and said bonds were pledged with Atlantic Coast Line Railroad Company as security for a loan made on said date in the principal amount of $235,311.96, with interest thereon at the rate of 5% per annum.

All of said $825,000 principal amount of first and refunding bonds are now issued and outstanding under and entitled to the benefits of the first and refunding mortgage; but no adjudication is now made as to whether the first and refunding bonds originally pledged as aforesaid, or any of them, are still held as collateral as aforesaid or as to the amount now due thereon for principal and interest.

Upon the surrender to it for cancellation of all said $825,000 principal amount of first and refunding bonds and upon the payment of any and all sums payable to it pursuant to the provisions of the first and refunding mortgage, the trustee thereunder is authorized to satisfy and discharge the first and refunding mortgage.

Article V. Income mortgage

(18) On or about November 1, 1915, said Atlanta, Birmingham & Atlantic Railway Company, being thereunto duly authorized by law and pursuant to due corporate action of its stockholders and directors, duly authorized the creation and issue of its fifteen-year five

per cent income mortgage gold bonds (hereinafter sometimes called the income bonds) to an aggregate principal amount not to exceed five million two hundred thousand dollars ($5,200,000), to be dated as of November 1, 1915, to be payable November 1, 1930, and to bear interest at the rate of five per cent per annum; and to secure the same, for due consideration said Atlanta, Birmingham & Atlantic Railway Company duly made, executed under its corporate seal, acknowledged, and delivered, on or about November 1, 1915, to said Columbia Trust Company, as trustee, a certain indenture of mortgage and deed of trust, dated as of November 1, 1915 (hereinafter sometimes called the income mortgage), by which said Atlanta, Birmingham & Atlantic Railway Company transferred and conveyed to said Columbia Trust Company, as trustee, the property therein described, including all of the property then owned by said Atlanta, Birmingham & Atlantic Railway Company and including all property of whatsoever nature or character which might be or become subject to the lien or charge of the first and refunding mortgage, subject, however, to the lien and encumbrance of the first mortgage but only in so far as the first mortgage might attach to the properties covered by the lien of the income mortgage, and subject also to the prior lien of the first and refunding mortgage, but only to such extent as from time to time there might be duly and properly issued and outstanding thereunder first and refunding bonds. Subsequent to the date of the execution and delivery of the income mortgage, said Atlanta, Birmingham & Atlantic Railway Company duly made and executed under its corporate seal and delivered to said The Equitable Trust Company of New York, as trustee under the first and refunding mortgage, certain supplemental mortgages, as hereinbefore in paragraph (16) set forth, wherein and whereby said Atlanta, Birmingham & Atlantic Railway Company transferred and conveyed to said The Equitable Trust Company of New York, as trustee, certain parcels of real estate and other property therein described, which said real estate and other property, by reason of the provisions of the income mortgage, became and are subject also to the lien and charge of the income mortgage and additional security for the payment of the principal and interest of the income bonds and scrip issued or which might be issued under or secured by the income mortgage.

Exhibit A to the bill of complaint of said Columbia Trust Company, as trustee in equity cause No. 187, is a true copy of the income mortgage, and Exhibits B, C, D, E, F, and G, introduced in evidence at the hearing before the special master on November 27, 1923, are true copies, respectively, of the several supplemental mortgages to said The Equitable Trust Company of New York, as trustee, dated, respectively, August 23, 1917, October 4, 1917, June 20, 1918, July 9, 1918, September 18, 1920, and November 10, 1920.

The income mortgage was executed and delivered in all respects in conformity with law, and the trustee therein named duly accepted the trusts therein and thereby created and has since continuously

been and now is the trustee of the income mortgage, and the income mortgage was thereafter duly recorded in accordance with and as required by law in every office in which they were so required by law to be recorded in the several counties wherein any of the lines of railroad or real or personal property subject to the lien of the income mortgage were or are situated.

(19) On or about the date of the execution and delivery of the income mortgage, and at various dates thereafter, said Atlanta, Birmingham & Atlantic Railway Company, being thereunto duly authorized by law and pursuant to due corporate action, did duly execute under its corporate seal in all respects as provided in the income mortgage, and said Columbia Trust Company, as trustee under the income mortgage, did duly certify, authenticate, and deliver $5,166,000 principal amount of income bonds, of which $54,000 principal amount were duly delivered to and held by said trustee for the pro rata benefit of the holders of the scrip certificates hereinafter mentioned. Said Atlanta, Birmingham & Atlantic Railway Company duly executed and said Columbia Trust Company, as trustee, did duly certify, authenticate, and deliver $53,786.78 principal amount of scrip certificates representing an equal face amount of income bonds. Thereafter and from time to time $49,000 principal amount of scrip certificates were surrendered to and cancelled by Columbia Trust Company, as trustee, and said Columbia Trust Company, as trustee, did duly deliver in exchange therefor $49,000 principal amount of income bonds out of the $54,000 principal amount of income bonds held by it as aforesaid. In addition to the remaining $5,000 principal amount of income bonds held by said trustee as aforesaid, there is a total of $5,165,786.78 principal amount of income bonds and scrip certificates which have been delivered by said trustee and which remain uncancelled. Of said principal amount of income bonds and scrip certificates, $221,880 principal amount are held by said Atlanta, Birmingham & Atlantic Railway Company or by said B. L. Bugg, as receiver as aforesaid, and are not now outstanding or entitled to participate in the lien and security of the income mortgage or in any distribution of the funds hereafter determined to be applicable to the income bonds; and said B. L. Bugg, as receiver as aforesaid, is hereby authorized and directed to deliver said $221,880 principal amount of income bonds and scrip certificates to said Irving Bank-Columbia Trust Company, as trustee, for cancellation and cremation, and said trustee is authorized and directed to cancel and cremate the same; $4,943,906.78 is the total principal amount of income bonds and scrip certificates now outstanding under and secured by the income mortgage in the hands of bona fide purchasers for value, and the same are the lawfully created, valid and existing obligations of the Atlanta, Birmingham & Atlantic Railway Company.

Of said $4,943,906.78 principal amount $400,000 were pledged as security for the loan made by Atlantic Coast Line Railroad Company hereinabove in subdivision (c) of paragraph (17) mentioned. No adjudication is now made as to the amount now due in respect of

the principal of and interest on said $400,000 principal amount of income bonds.

The remaining $4,543,906.78 principal amount of income bonds and scrip certificates are herein sometimes referred to as the unpledged income bonds and scrip certificates.

Article VI. Creditors cause

(20) Said Atlanta, Birmingham & Atlantic Railway Company was on February 25, 1921, indebted to Birmingham Trust and Savings Company, the complainant in equity cause No. 156, on a promissory note in the principal amount of $90,000 exclusive of interest. Said Atlanta, Birmingham & Atlantic Railway Company was on February 25, 1921, justly indebted to divers other persons and corporations in divers amounts then past due and then was and ever since has been insolvent and wholly unable to meet its debts and obligations.

(21) Thereupon and on or about said February 25, 1921, said Atlanta, Birmingham & Atlantic Railway Company being so indebted to said Birmingham Trust and Savings Company, said Birmingham Trust and Savings Company, the complainant in equity cause No. 156, on behalf of itself and other creditors of said Atlanta, Birmingham & Atlantic Railway Company, filed its bill of complaint in this court against said Atlanta, Birmingham & Atlantic Railway Company, which said bill of complaint among other things represented and showed that said Birmingham Trust and Savings Company was a creditor of said Atlanta, Birmingham & Atlantic Railway Company and alleged that said Atlanta, Birmingham & Atlantic Railway Company was insolvent and was unable to pay its obligations, and prayed among other things for the administration of the entire property and assets of said Atlanta, Birmingham & Atlantic Railway Company and for the appointment of a receiver of all the property and assets of said Atlanta, Birmingham & Atlantic Railway Company.

Thereupon said Atlanta, Birmingham & Atlantic Railway Company duly filed its answer to said bill of complaint, admitting all the material allegations of said bill of complaint and consenting to an order appointing a receiver, as prayed for. Such proceedings were thereupon had in said cause that this court granted the prayer of said bill and by an order made and filed in said equity cause No. 156 on February 25, 1921, duly appointed said B. L. Bugg receiver of all the property, assets, rights, and franchises of said Atlanta, Birmingham & Atlantic Railway Company wherever situated, including the property covered by the liens of the respective mortgages to said Old Colony Trust Company, as trustee, said The Equitable Trust Company of New York, as trustee, and said Columbia Trust Company, as trustee, and said receiver, having duly qualified as receiver as aforesaid, thereupon entered into the possession of all of said property of which he had been so appointed receiver.

Thereafter and within ten days after said February 25, 1921, said Birmingham Trust and Savings Company filed and caused to be entered duly certified copies of said bill of complaint and of said order appointing said receiver in the District courts of the United States for the Southern District of Georgia, the Middle District of Alabama, and the Northern District of Alabama.

All of said property of said Atlanta, Birmingham & Atlantic Railway Company has ever since been in the custody of this court through its said receiver duly appointed and was so in the custody of this court through its said receiver at the time of filing in this court of the bill of complaint of said Old Colony Trust Company, trustee, in equity cause No. 188, and the bill of complaint of said Columbia Trust Company, trustee in equity cause No. 187, and the bill of complaint of the Equitable Trust Company of New York, trustee in equity cause No. 190, as hereinafter set forth.

Article VII. First-mortgage cause

(22) Default has been made in the performance of the covenants contained in the first mortgage and in the first-mortgage bonds secured thereby through the nonpayment of interest which became due and payable on July 1, 1921, and January 1, 1922, on the first-mortgage bonds then issued and outstanding, although payment of said interest was duly demanded in accordance with the terms of the first mortgage and the first-mortgage bonds.

Default having been made as aforesaid in the payment of the installments of interest which became due and payable on the first-mortgage bonds on July 1, 1921, and January 1, 1922, and both of said installments of interest having remained unpaid for a period of more than sixty (60) days, said Old Colony Trust Company, as trustee under the first mortgage, on or about March 11, 1922, filed its bill of complaint in this court against said Atlantic & Birmingham Railway Company and said Atlanta, Birmingham & Atlantic Railway Company and others praying, among other things, that the first mortgage be foreclosed, that a receiver be appointed of the property covered by the lien of the first mortgage, and that a sale be had of the mortgaged premises. Thereafter the defendants named in said bill of complaint, or some of them, duly filed their respective answers. On or about March 11, 1922, said B. L. Bugg was by an order of this court in said cause appointed under said bill of complaint receiver of all the railroads, property, and premises mortgaged and pledged under the first mortgage and said mortgage supplemental thereto, and of all tolls, earnings, incomes, rents, issues, and profits of said railroads, property, and premises, and the receivership of said B. L. Bugg was thereupon extended to said railroads, property, and premises, and said B. L. Bugg duly qualified as such receiver and has since continued to have possession of and operate the same as such receiver.

Thereupon, on or about March 12, 1922, an ancillary bill of complaint was filed by said Old Colony Trust Company, trustee, in the District Court of the United States for the Southern District of Georgia, and on or about November 2, 1924, ancillary bills were filed by said Old Colony Trust Company, trustee, in said District Courts of the United States for the Northern and Middle Districts of Alabama and the Southern District of Florida.

(23) On December 10, 1924, default having been made as aforesaid in the payment of the semiannual installments of interest which became due and payable on the first-mortgage bonds on July 1, 1921, and January 1, 1922, as set forth in the original bill of complaint of said Old Colony Trust Company, trustee, and default having also been made in the payment of all other installments of interest which had subsequently become due and in the performance of other covenants of the first mortgage, and all such defaults having continued for a period of more than sixty (60) days, said Old Colony Trust Company, trustee, pursuant to and in strict compliance with the provisions of the first mortgage, duly declared the principal of the first-mortgage bonds then outstanding in the amount of $4,090,000 to be due and payable immediately, and the same thereupon became and was and now is immediately due and payable and unpaid.

Thereafter on April 7, 1926, said Old County Trust Company, as trustee, filed a supplemental bill of complaint in this court setting forth the fact that the principal of the first mortgage bonds had been declared due and payable and praying for proper relief in the premises. Ancillary supplemental bills of complaint were thereafter filed on or about April 7, 1926, in said District Courts of the United States for the Southern District of Georgia, the Northern and Middle Districts of Alabama, and the Southern District of Florida.

(24) All of said defaults in the performance of the covenants contained in the first mortgage and the first mortgage bonds secured thereby still continue and have not been waived, and said Old Colony Trust Company, as trustee as aforesaid, is entitled to the foreclosure of the lien of the first mortgage and of said supplementary mortgage, and to the sale of all the property, real, personal, and mixed of every kind and description now covered by the lien of said mortgage deed of trust and said mortgage deed of trust supplementary thereto.

(25) Except as aforesaid no proceedings have been had at law or in equity for the collection of the debt secured by the first mortgage.

Article VIII. Amount due under first mortgage

(26) The amount due, payable, and owing from said Atlantic & Birmingham Railway Company at the date of this decree in respect of the principal of and interest on the first mortgage bonds now

outstanding in the principal amount of $4,090,000 as hereinabove found is as follows, and no part thereof has been paid:

Installment of interest due July 1, 1921	$102,250
Installment of interest due January 1, 1922	102,250
Installment of interest due July 1, 1922	102,250
Installment of interest due January 1, 1923	102,250
Installment of interest due July 1, 1923	102,250
Installment of intreest due January 1, 1924	102,250
Installment of interest due July 1, 1924	102,250
Principal of the said bonds which became due by declaration on December 10, 1924	4,090,000
Interest on said principal amount from July 1, 1924, to December 10, 1924, at the rate of five per cent per annum and from December 10, 1924, to the date of this decree at the rate of six per cent per annum	430,519.18
Total amount due and payable at the date of this decree in respect of the principal of and interest upon the first-mortgage bonds and the coupons thereunto appertaining	$5,236,269.18

Article IX. Property subject to lien of first mortgage

(27) The first mortgage of said Atlantic & Birmingham Railway Company to said Old Colony Trust Company is a valid and subsisting lien upon the property owned by said Atlantic & Birmingham Railway Company at the time of the execution and delivery of said first mortgage and the supplemental mortgage mentioned in paragraph (11) of this decree and therein specifically described, and also the property acquired by said Atlantic & Birmingham Railway Company subsequent to January 1, 1904, and prior to April 12, 1906, except such portions thereof as may have been released from the lien of said mortgage and the releases for which have been duly filed for record in the proper counties. Said lien is prior and superior to any and all other liens or claims in favor of any party to the above-entitled causes or any of them. The court does not now adjudicate whether or not said lien attaches to any other property hereinafter in Article XXXII of this decree described and directed to be sold.

Article X. First and refunding mortgage cause

(28) On May 1, 1921, an installment of interest upon $530,000 principal amount of the first and refunding bonds issued and then outstanding as aforesaid became due and payable, but said Atlanta, Birmingham & Atlantic Railway Company, neglected and failed to have funds available for the payment of said installment at its office or agency in the borough of Manhattan, city of New York, where the same was due and payable, and default was made and still continues under the first and refunding mortgage in the payment of said installment upon such bonds. No adjudication is now made as to what other defaults occurred in the payment of installments of interest on the $825,000 principal amount of first and refunding bonds now issued and outstanding or as to the amount accrued on said bonds for interest.

(29) Said The Equitable Trust Company of New York, as trustee under the first and refunding mortgage, and in conformance with and in pursuance of the power and authority granted it under the terms and provisions of the first and refunding mortgage, on or about March 27, 1922, did, by notice in writing delivered to said Atlanta, Birmingham & Atlantic Railway Company, declare the principal of all first and refunding bonds then outstanding under the first and refunding mortgage to be due and payable immediately, and the same thereupon became and was and now is immediately due and payable and unpaid.

(30) On or about April 5, 1922, The Equitable Trust Company of New York, as trustee under the first and refunding mortgage, filed its bill of complaint in this court against said Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, as receiver, and others, said bill of complaint praying, among other things, that a receiver be appointed of the property covered by the first and refunding mortgage and by said supplemental mortgages referred to in paragraph (16) hereof, that the rents, issues, profits, revenue, and income of said property be applied in accordance with the provisions of the first and refunding mortgage, and that the first and refunding mortgage be foreclosed, and that a sale be had of the mortgaged premises. Thereafter the defendants named in said bill of complaint, or some of them, duly filed their respective answers. On or about April 5, 1922, said B. L. Bugg was by an order of this court in said cause appointed under said bill of complaint receiver of all of the railroad properties and premises mortgaged and pledged under the first and refunding mortgage and the mortgages supplemental thereto, and of all tolls, earnings, incomes and rents, issues, and profits of said railroad's properties and premises, and the receivership of said B. L. Bugg was thereupon extended to said railroads, properties, and premises, and said B. L. Bugg duly qualified as such receiver and duly entered upon and took possession of said property and assets and has since continued to have possession of and operate the same. Within ten days after the making and entering of said order appointing said receiver as aforesaid and thereby extending the receivership of said B. L. Bugg to said mortgaged property as aforesaid, duly certified copies of said bill of complaint of The Equitable Trust Company of New York and of said order appointing said receiver as aforesaid were filed and entered in the District Court of the United States for the Southern District of Georgia and the District Court of the United States for the Middle District of Alabama and the District Court of the United States for the Northern District of Alabama. Thereafter, and on or about February 5, 1924, an ancillary bill of complaint was filed by said The Equitable Trust Company of New York in the District Court of the United States for the Southern District of Florida, said bill of complaint being of the same purport and intent as the bill of complaint hereinabove referred to filed in this court, and on or about February 5, 1924, an

order of said District Court for the Southern District of Florida was duly made and entered extending the receivership of said B. L. Bugg to said foreclosure suit.

(31) Except as aforesaid no proceedings have been had at law or in equity for the collection of the debt secured by the first and refunding mortgage.

Article XI. Property subject to lien of first and refunding mortgage.

(32) The first and refunding mortgage to said The Equitable Trust Company of New York is a valid and subsisting lien upon the property owned by said Atlanta, Birmingham & Atlantic Railway Company at the time of the execution and delivery thereof and therein specifically described and upon the property specifically described in the supplemental mortgages, dated, respectively, August 23, 1917, October 4, 1917, June 20, 1918, July 9, 1918, September 18, 1920, and November 10, 1920, referred to in paragraph (16) of this decree, except such portions of said property as may have been released from the lien of the first and refunding mortgage and the releases for which have been duly filed for record in the proper counties, and upon the 1,000 shares of the capital stock of Eastern Realty Company referred to in said paragraph (16) and $24,647.52 of insurance moneys referred to in said paragraph (16). Said lien is prior and superior to any and all other liens or claims in favor of any party to the above-entitled causes, or any of them, except that said lien is junior and inferior to the lien of the first mortgage as to the property owned by said Atlantic & Birmingham Railway Company at the time of the execution and delivery of the first mortgage and the mortgage supplemental thereto and therein specifically described and also the porperty acquired by said Atlantic & Birmingham Railway Company subsequent to January 1, 1904, and prior to April 12, 1906, and except further that the relative priorities of the lien of the first mortgage and the lien of the first and refunding mortgage as to the property hereinabove decreed to be subject to the lien of the first and refunding mortgage, other than said property owned by said Atlantic & Birmingham Railway Company at the time of the execution and delivery of the first mortgage and the mortgage supplemental thereto and therein specifically described and also the property acquired by said Atlantic & Birmingham Railway Company subsequent to January 1, 1904 and prior to April 12, 1906, is reserved by this court for future determination. The fund on deposit with the Equitable Trust Company of New York mentioned in subparagraph (b) of subdivision III of Article XXXII of this decree, amounting (with interest accrued thereon to April 1, 1926) on April 23, 1926, to $167,818.84 (except any portion thereof which may, by order of this court made after due notice to the trustee under the first and refunding mortgage, be adjudged to represent the proceeds of property subject at the time of its sale to the prior and superior lien of the first mortgage) represents the proceeds of prop-

erty subject at the time of its sale to the prior and superior lien of the first and refunding mortgage and, until the first and refunding mortgage shall have been satisfied, shall be held separate and apart and only be paid out, with the approval of the trustee under the first and refunding mortgage, for the purposes in article eighth of the first and refunding mortgage provided. The court does not now adjudicate whether or not the lien of the first and refunding mortgage attaches to any other property hereinafter in Article XXXII of this decree described and directed to be sold.

Article XII. Income mortgage cause

(33) The appointment, on or about February 25, 1921, of said receiver in the above-mentioned creditor's suit of Birmingham Trust and Savings Company against said Atlanta, Birmingham & Atlantic Railway Company constituted an event of default under the income mortgage and said default still continues and has not been waived. Certain other events of default, as defined in the income mortgage, have happened and still continue and have not been waived, said defaults beings set out more in detail in said bill of complaint of said Columbia Trust Company filed in equity cause No. 187.

(34) Subsequent to the appointment of said receiver in the above-mentioned creditor's suit of said Birmingham Trust and Savings Company against said Atlanta, Birmingham & Atlantic Railway Company, and by reason of said appointment and the other defaults under the income mortgage, said Columbia Trust Company, as trustee under the income mortgage and in conformity with and pursuant to the provisions thereof, upon the written request of a majority in interest of the holders of the income bonds, on or about March 10, 1922, by written notice duly delivered as required in and by the income mortgage, duly declared the principal of all the income bonds and scrip certificates issued under and secured by and then outstanding under the income mortgage to be due and payable immediately, and the same thereupon became and were and now are immediately due and payable and unpaid. Said Columbia Trust Company, as trustee under the income mortgage, on said date made demand upon said Atlanta, Birmingham & Atlantic Railway Company and said B. L. Bugg as receiver thereof for the payment of said principal due on the income bonds, but said Atlanta, Birmingham & Atlantic Railway Company and said receiver wholly failed and refused to pay the same or any part thereof. No interest has been paid by said Atlantc, Birmingham & Atlantic Railway Company upon the income bonds and scrip certificates issued under and secured by the income mortgage since the semiannual installment of interest which was paid on March 1, 1920. Said Columbia Trust Company, as trustee under the income mortgage, on or about September 20, 1920, received United States Treasury warrant No. 5269 in the amount of $100,000 for the purpose of paying interest then due upon the income bonds issued under and secured by the income mortgage.

Said sum, together with interest thereon, is now held by said Columbia Trust Company for account of the holders of the income bonds or coupons appertaining thereto, and said Columbia Trust Company is hereby authorized to distribute the said sum to such holders on and after such date as this court may hereafter fix and determine, after deducting therefrom any and all expenses, liabilities, and advances heretofore or hereafter made or incurred by said trustee, including its compensation, and not otherwise paid; and no purchaser at any sale made under this decree or party to the above-entitled causes or any of them or stockholder or creditor of said Atlanta, Birmingham & Atlantic Railway Company, other than said Columbia Trust Company and said holders, shall have any right in or to said sum.

(35) On or about March 11, 1922, said Columbia Trust Company, as trustee under the income mortgage, filed its bill of complaint in this court against said Atlanta, Birmingham & Atlantic Railway Company and said B. L. Bugg, as receiver, and others, praying among other things that the income mortgage be foreclosed, that a receiver be appointed of the property covered by the lien of the income mortgage and by said supplemental mortgages referred to in paragraph (18) hereof, that the rents, issues, profits, revenue, and income of said property be applied in accordance with the provisions of the incom[illegible]ortgage, and that a sale be had of the mortgaged premises. Thereafter the defendants named in said bill of complaint, or some of them, duly filed their respective answers. On or about March 11, 1922, said B. L. Buggs was, by an order of this court in said cause, appointed under said bill of complaint receiver of all the railroads, properties, and premises mortgaged and pledged under the income mortgage and said supplemental mortgages, and of all tolls, earnings, incomes, rents, issues, and profits of said railroads, properties, and premises, and the receivership of said B. L. Bugg was thereupon extended to said railroads, properties, and premises, and said B. L. Bugg duly qualified as such receiver and duly entered upon and took possession of said property and assets and has since continued to have possession of and operate the same. Within ten days after the making and entering of said order appointing said receiver as aforesaid and extending said receivership of said B. L. Bugg to said mortgaged property as aforesaid, duly certified copies of said bill of complaint of said Columbia Trust Company and of said order appointing said receiver as aforesaid were duly filed and entered in the District Court of the United States for the Southern District of Georgia and the District Court of the United States for the Middle District of Alabama and the District Court of the United States for the Northern District of Alabama. Thereafter and on or about May 11, 1925, an ancillary bill of complaint was filed by said Irving Bank-Columbia Trust Company in the District Court of the United States for the Southern District of Florida, said bill of complaint being of the same purport and intent as said bill of complaint hereinabove referred to filed by said Columbia Trust Company in

this court, and on or about May 11, 1925, an order of said District Court for the Southern District of Florida was duly made and entered extending the receivership of said B. L. Bugg to said foreclosure suit. On or about May 2, 1925, said Irving Bank-Columbia Trust Company filed in this court its amendment to its said bill of complaint filed by said Columbia Trust Company in this court, which amendment referred specifically to said supplemental mortgages mentioned in paragraph (18) hereof and to the scrip certificates representing fractional interests in income bonds and corrected various errors and omissions in said bill of complaint filed by said Columbia Trust Company in this court as aforesaid on or about March 11, 1922.

(36) Except as aforesaid no proceedings have been had at law or in equity for the collection of the debt secured by the income mortgage.

Article XIII. Amount due upon unpledged income bonds and scrip certificates

(37) The amount due, payable, and owing from said Atlanta, Birmingham & Atlantic Railway Company at the date of this decree in respect of the principal of and interest upon the unpledged income bonds and scrip certificates is as follows, and no part thereof has been paid:

Principal of the said bonds and scrip which became due by declaration on March 10, 1922	$4,543,906.78
Interest on said principal amount from March 10, 1922, to the date of this decree at the rate of five per cent per annum	940,336.26
Total amount due and payable at the date of this decree in respect of the principal of and interest upon the unpledged income bonds and scrip certificates	$5,484,243.04

Article XIV. Property subjected to lien of income mortgage

(38) The income mortgage to said Columbia Trust Company is a valid and subsisting lien upon the property owned by said Atlanta, Birmingham & Atlantic Railway Company at the time of the execution and delivery thereof and therein specially described, and upon the properties specifically described in the supplemental mortgages dated, respectively, August 23, 1917, October 4, 1917, June 20, 1918, July 9, 1918, September 18, 1920, and November 10, 1920, referred to in paragraph (18) of this decree, except such portions of said property as may have been released from the lien of the income mortgage and the releases for which have been duly filed for record in the proper counties, and upon the 1,000 shares of the capital stock of Eastern Realty Company referred to in paragraph (16) of this decree, and $24,647.52 of insurance moneys referred to in said paragraph (16). Said lien is prior and superior to any and all other liens or claims in favor of any party to the above-entitled causes or any of them, except that said lien is junior and inferior

to the lien of the first mortgage as to the property owned by said Atlantic & Birmingham Railway Company at the time of the execution and delivery of the first mortgage and the mortgage suplemental thereto and therein specifically described and also the property acquired by said Atlantic & Birmingham Railway Company subsequent to January 1, 1904, and prior to April 12, 1906, and except further that as to any and all property covered thereby said lien is junior and inferior to the lien of the first and refunding mortgage, and except further that the relative priorities of the lien of the first mortgage and the lien of the income mortgage as to the property hereinabove decreed to be subject to the lien of the income mortgage, other than said property owned by said Atlantic & Birmingham Railway Company at the time of the execution and delivery of the first mortgage and the mortgage supplemental thereto and therein specifically described and also the property acquired by said Atlantic & Birmingham Railway Company subsequent to January 1, 1904, and prior to April 12, 1906, is reserved by this court for future determination. The court does not now adjudicate whether or not the lien of the income mortgage attaches to any other property hereinafter in Article XXXII of this decree described and directed to be sold.

Article XV. Consolidation of causes

(39) Proceedings were had in each of the aforesaid causes brought by said Old Colony Trust Company and by said The Equitable Trust Company of New York and said Columbia Trust Company, respectively, against said Atlanta, Birmingham & Atlantic Railway company and others consolidating said causes and each of them with the aforesaid cause of said Birmingham Trust and Savings Company, complainant, against said Atlanta, Birmingham & Atlantic Railway Company, defendant.

Article XVI. Payment decreed

(40) Said Atlantic & Birmingham Railway Company or some one on its behalf within ten (10) days after the entry of this decree shall pay or cause to be paid to said Old Colony Trust Company, trustee as aforesaid, the sum of $5,236,269.18, being the amount hereby found to be due in respect of the principal of and interest upon the first *first* mortgage bonds, with interest on said amount at the rate of seven per cent per annum from the date of this decree to the date of payment.

Said Atlanta, Birmingham & Atlantic Railway Company or some one on its behalf within ten (10) days after the entry of this decree shall pay or cause to be paid to Irving Bank-Columbia Trust Company, trustee as aforesaid, the sum of $5,484,243.04, being the amount hereby found to be due in respect of the principal of and interest upon the unpledged income bonds and scrip certificates, with in-

terest on said amount at the rate of seven per cent per annum from the date of this decree to the date of payment.

If such payments, or either of them, shall be so made, any party to the above-entitled causes, or any of them, may apply to this court for such further instructions and for such further orders and decrees as may be just and equitable.

Article XVII. Impounded income

(41) The net revenue, income, rents, and profits accruing or derived from the properties in this decree or hereafter by this court adjudged to be subject, respectively, to the liens of the first mortgage, the first and refunding mortgage, and the income mortgage, are validly and effectively impounded for the benefit of and subject to the liens of said mortgages, respectively, from and after the dates on which said bills for the foreclosure of said mortgages were respectively filed. All questions as to the amount of the income during the receivership period so impounded or subjected to the respective liens of said mortgages or not so impounded and subjected to the respective liens of said mortgages and as to what part or parts of the proceeds of sale hereunder are attributable to income so impounded are reserved by this court for future determination.

Article XVIII. Sale of property

(42) The property and assets described in Article XXXII (all of which property and assets are hereinafter sometimes termed the property hereby directed to be sold) constitute a single property which should be operated as a single enterprise. It is to the interest of all parties to the above-entitled causes or any of them and all other parties interested, including the public, that the property hereby directed to be sold be offered for sale in one parcel as an entirety. The value of said property in parcels will be much less than its value as a whole, and said property can not be sold in separate lots or parcels without great and irreparable loss and sacrifice.

It is, therefore, further ordered, adjudged, and decreed as follows:

The property and assets described in Article XXXII shall be sold in the manner and subject to the provisions hereinafter in this decree set forth without valuation, appraisement, redemption, or extension and free from any right of redemption, and all the lien, right, title and interest, and equity of redemption of said Atlanta, Birmingham & Atlantic Railway Company, its creditors and stockholders, and of all persons claiming under them or any of them, and of all parties to the above-entitled causes and any of them, and of all persons claiming under said parties, or any of them, excepting always the trustee under the first and refunding mortgage, of, in,

and to the said property and assets and every part and parcel thereof, shall be forever barred and foreclosed, subject, however, to the provisions of Article XXVI of this decree.

Article XIX. Appointment of special master and notice of sale

The sale directed by this decree shall be made by and under the direction of Albert G. Foster, Esq. (hereinafter referred to as the special master), who is hereby appointed special master for that purpose and for the other purposes herein mentioned. Said sale may be made by the special master in person or by his duly appointed agent. Said sale shall be made at public auction to the highest bidder as hereinafter directed upon the premises at the Haynes Street freight station of said Atlanta, Birmingham & Atlantic Railway Company near the intersection of Haynes Street and Hunter Street, in the city of Atlanta, in the county of Fulton and State of Georgia, on a day and at an hour to be fixed by the special master, and notice of the time and place of said sale, describing briefly the property to be sold and referring to this decree for further particulars, shall be published twice in each week for six consecutive weeks prior to said sale in the Atlanta Constitution, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Atlanta, Georgia, and in the New York Evening Post, a daily newspaper printed, published, regularly issued, and having a general circulation in the borough of Manhattan, city of New York, New York, and once a week for at least four sucessive weeks prior to said sale in the Waycross Journal, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Waycross, Georgia, and in the Boston Evening Transcript, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Boston, Massachusetts. Said notice when so published shall constitute due, timely, and sufficient notice to all persons of said sale and of the hearing on the report of the special master in respect of said sale and shall for all purposes be held to be valid and sufficient as to the description of the property hereby directed to be sold if the same shall contain substantially the following description thereof:

"All the property and assets of every kind and character of Atlanta, Birmingham & Atlantic Railway Company and/or B. L. Bugg, as receiver of said Atlanta, Birmingham & Atlantic Railway Company, including (but without limiting the generality of the foregoing) the line of railroad begining in the city of Brunswick and running to the city of Atlanta, all in the State of Georgia, and the branch line of railroad beginning in the town of Sessoms and running to the city of Waycross, all in the State of Georgia, and the branch line of railroad beginning in the city of Fitzgerald and running to the city of Thomasville, all in the State of Georgia, and the line of railroad beginning in the town of Manchester in the State

of Georgia, and running to the city of Birmingham, in the State of Alabama, and franchises, locomotives, cars, equipment, materials and supplies, and real estate situated in the States of Georgia, Alabama, and Florida, and shares of stock, cash, and receivables, and other property, real and personal, for a more particular description of which property and assets and the liens and conditions subject to which the same is to be sold reference is hereby made to the decree of the United States District Court for the Northern District of Georgia, Northern Division, dated April 30, 1926, and filed in the office of the clerk of said United States District Court in the cause entitled 'Birmingham Trust and Savings Company, Complainant, vs. Atlanta, Birmingham & Atlantic Railway Company, Defendant, Consolidated Cause. In Equity No. 156,' and the constituent causes in equity Nos. 156, 188, 187, and 190."

The special master may, and at the joint request of the solicitors for said Old Colony Trust Company, trustee, and said Irving Bank-Columbia Trust Company, trustee, shall, adjourn or postpone said sale from time to time to any future day by oral announcement, made either personally or by some person designated by him, of such adjournment at the time and place fixed for the sale or for any adjourned sale, and may without further notice or advertisement proceed with the sale on any day to which the same may have been adjourned.

On the day following the conclusion of the bidding at said sale or said adjourned sale, or if said day be Sunday or a legal holiday then on the next day not Sunday or a legal holiday, report in respect of said sale to this court at the courtroom of the United States District Court for the Northern District of Georgia, Northern Division, in the city of Atlanta, State of Georgia; and this court reserves the right at or prior to said time to adjourn or postpone the hearing upon such report of the special master, or at said time, or at any time to which such hearing may be adjourned or postponed, to order the approval or disapproval of said sale to order such further or other sales, if any, as may be deemed advisable, and to make such orders, judgments, and decrees in the premises as it may deem proper. The above-entitled causes and each of them are hereby set for further hearing before this court at the time and place of the making of the above-directed report to this court. Notice that such report will be made and such hearing held shall be included in the notice of sale to be published as hereinbefore in this article directed, and announcement thereof shall be made by the special master at the time of said sale. Such hearing may thereupon be had without further notice. The special master shall also make from time to time such other reports as shall be necessary or desirable to show his action in the premises.

The court reserves the right at any time, in term or in chambers, to appoint from time to time another person or persons special master under this decree with all the powers conferred by this decree upon the special master, in case of the death or inability or failure

to act of the special master first named or other appointee, or in case of the resignation of said special master or other appointee, or in case of the removal by the court of the said special master or other appointee. The expression "special master" wherever used herein shall mean and include any person or persons so appointed.

Either Old Colony Trust Company, as trustee as aforesaid, or Irving Bank-Columbia Trust Company, as trustee as aforesaid, or any holder of first mortgage bonds or any holder of first and refunding bonds or any holder of income bonds, or any creditor or stockholder of said Atlanta, Birmingham & Atlantic Railway Company, or any party to the above-entitled causes or any of them, may bid at the sale and, if successful, may purchase in his, its, or their own right.

The property, both real and personal, hereby directed to be sold may be inspected by intending bidders, subject to such reasonable regulations as the receiver may prescribe.

Article XX. Manner of sale; qualifying deposit; upset price.

The property directed to be sold by this decree shall be sold as an entirety and as one parcel.

The court hereby expressly reserves the right to confirm or not to confirm any sale made as provided in this decree, and to accept or reject any bid or bids which may be made at any such sale.

In the event that there shall be tendered to the special master any bid for or offer to purchase the property directed to be sold or any part thereof, which is made conditional upon or subject to any terms or conditions differing from or in addition to those imposed by this decree, the special master shall, notwithstanding such variation from the provisions of this decree, receive and report such bid or offer to this court, together with the highest unconditional and unqualified bid, if any, received in the manner herein directed. The court reserves the right, in the event that it shall deem any conditional or qualified bid or offer to be advantageous, to modify this decree and accept and confirm such conditional or qualified bid or offer and to make such order or decree in the premises as the court may deem proper.

In making the sale the special master shall accept no bid or offer from anyone who shall not at least twenty-four hours prior to the offering by the special master of the property for sale under this decree deposit with the special master and deliver to him as a pledge he will make good his bid in event of its acceptance:

(a) The sum of $50,000 in cash or certified check on some national bank or trust company acceptable to the special master and made or endorsed payable to his order; or

(b) $200,000 principal amount of first mortgage bonds in bearer form, and if coupon bonds accompanied by the coupon due July 1, 1921, and all subsequent coupons; or

(c) $200,000 principal amount of income bonds in bearer form, and if coupon bonds accompanied by coupon No. 9 and all subsequent coupons.

Said deposit may be made partly in cash and/or partly by certified check and/or partly in first mortgage bonds and/or partly in income bonds, but in the same relative proportions.

In lieu of the deposit of bonds and coupons in accordance with the requirements of any of the foregoing clauses, the special master shall accept the certificate of said Irving Bank-Columbia Trust Company and/or of said Old Colony Trust Company and/or of the Farmers' Loan and Trust Company and/or of any other national bank or trust company acceptable to the special master, that it holds subject to the order of the special master bonds of the required character in bearer form and, if coupon bonds, accompanied by the required coupons.

Any deposit so received from a bidder whose bid is not to be reported to the court shall be returned to him when the property hereby directed to be sold shall be struck down. A deposit received from the accepted bidder or bidders shall be applied on account of the purchase price of the property hereby directed to be sold. In case any bidder after the acceptance of his bid by the special master shall not comply within the period of twenty days after the entry thereof with any order of this court relating to the payment of the purchase price, or if an appeal be taken from such order within the period of twenty days after the entry of the order finally affirming such order on appeal, then the cash and/or check and/or bonds and coupons deposited by such bidder shall be forfeited as a penalty for such failure and shall be applied to the payment of the expenses of a resale and towards making good any deficiency or loss in case the property sold to such bidder shall be sold at a less price on any such resale and to such other purposes as the court may direct. Other than such forfeiture of his qualifying deposit, a bidder, to whom or to whose assignee or assignees the property hereby directed to be sold shall not have been theretofore transferred and conveyed, shall be under no liability because of failure to complete his bid. If the court shall not confirm the sale, the deposit made by the accepted bidder or bidders shall be forthwith returned to such bidder or bidders.

The special master shall not accept any bid for the property directed to be sold less than the sum of $2,500,000. If at least said sum shall not be bid for said property, the special master shall adjourn the sale and shall apply to this court for further instructions with respect thereto.

Article XXI. Payment by purchaser

Upon confirmation of the sale the purchaser shall make such further payment or payments in cash on account of the purchase price as this court may from time to time direct. So much of the purchase price as may not be required by this court to be paid in cash may be paid in whole or in part in cash or by turning over to the special master at their distributive value, to be cancelled or

credited as herein provided, first mortgage bonds and coupons thereunto appertaining and/or income bonds and scrip certificates and/or claims against said Atlanta, Birmingham & Atlantic Railway Company allowed and established in the above entitled causes or any thereof. The value at which such bonds, coupons, scrip certificates and/or claims shall be received by the special master shall be the sum which would be payable out of the proceeds of sale upon such bonds, coupons, scrip certificates, and/or claims if the whole amount of the purchase price had been paid in cash. Said bonds and coupons and scrip certificates shall be in bearer form or accompanied by proper transfers to the special master, and said claims shall be accompanied by proper assignments thereof to the special master.

The purchaser shall not be required to pay any amount which under this decree or any order hereinafter made by this court is payable in cash out of the proceeds of sale to any holder of first mortgage bonds or income bonds or scrip certificates or claims against said Atlanta, Birmingham & Atlantic Railway Company until after this court shall direct payment of the cash distributive share of such proceeds to which such holder shall be entitled.

In lieu of the delivery to the special master of first mortgage bonds and coupons or income bonds and coupons or scrip certificates the special master shall accept the certificate or certificates of said Irving Bank-Columbia Trust Company and/or of said Old Colony Trust Company and/or of the Farmers' Loan and Trust Company and/or of any other national bank or trust company acceptable to the special master that it holds subject to his order bonds and/or scrip certificates of the amount and character therein specified in bearer form and, if in coupon form, accompanied by the coupons therein stated.

This court reserves the right to retake and resell the property herein directed to be sold upon such notice as it may direct in case the purchaser thereof shall fail or omit to make any payment on account of the unpaid balance of the purchase price within twenty (20) days after the entry of the order requiring such payment, or if an appeal be taken from such order within twenty days after the entry of the order finally affirming such order on appeal. This court also reserves the right to release and discharge the property hereby directed to be sold or any part or parts thereof from any lien or incumbrance imposed by this decree upon such terms and provisions as this court may determine.

Neither any purchaser nor the successors or assigns of any purchaser shall be required to see to the application of the purchase money.

Article XXII. Application of proceeds of sale

The funds arising from the sale of the property hereby directed to be sold shall be applied in accordance with the respective rights and liens (other than the lien of the first and refunding mortgage)

as hereinbefore adjudged or, where not adjudged, as they shall hereafter be determined by this court, all of which matters, including the allocation and distribution of the proceeds of sale in accordance with the respective rights and liens, are reserved by this court for future determination.

Nothing in this decree contained shall be deemed to determine whether or to what extent claims against said Atlanta, Birmingham & Atlantic Railway Company for materials and supplies furnished, or work and labor done, prior to February 25, 1921, are preferred over or entitled to be paid in priority to the bonds secured by the first mortgage, the first and refunding mortgage and the income mortgage, or any thereof. All such questions in so far as the same have not been heretofore finally determined are reserved by this court for future determination.

All amounts arising from the sale of the property directed to be sold shall be first applied to the payment of the proper expenses of the sale, including the compensation of the special master appointed to make the sale, and of all expenses incurred by the receiver in the discharge of his duties as such receiver after the delivery by him of possession of the property sold. All such payments on account of expenses shall be apportioned and charged against the proceeds of the sale of the property subject to the lien of the first mortgage and the proceeds of the sale of the property subject to the lien of the income mortgage and the proceeds of the sale of unmortgaged property in proportion to the amounts of said proceeds allocated, as in this article provided, to said properties respectively.

A. The proceeds of the sale of the property subject to the lien of the first mortgage, after deducting the proportion of expenses charged against said proceeds as hereinbefore provided, shall be applied as follows:

(1) To the payment of the amount found by this decree to be due in respect of the principal of and interest upon the first mortgage bonds, together with interest on said amount from the date of this decree to the date fixed for the payment thereof at the rate of seven per cent per annum. If the funds applicable to such payment shall not be sufficient to pay in full the amount so due in respect of the principal of and interest upon the first mortgage bonds with interest on said amount from the date of this decree to the date fixed for the payment thereof at the rate of seven per cent per annum, then said funds shall be distributed among the holders of the first mortgage bonds and the coupons due July 1, 1921, January 1, 1922, July 1, 1922, January 1, 1923, July 1, 1923, January 1, 1924, and July 1, 1924, thereunto appertaining ratably to the aggregate amount of such unpaid principal and interest without preference or priority of principal over interest or of interest over principal or of any instalment of interest over any other instalment of interest; provided, that if at the time of payment any of the first mortgage bonds and said coupons thereunto appertaining be held as collateral

security for obligations of said Atlanta, Birmingham & Atlantic Railway Company, the several holders thereof shall in no event be paid more than the respective amounts due and unpaid from said Atlanta, Birmingham & Atlantic Railway Company under the respective obligation or obligations for the payment of which said bonds and coupons may be held as collateral.

(2) Any residue shall be dealt with as this court may direct.

B. The proceeds of the sale of the property subject to the lien of the income mortgage, after deducting the proportion of expenses charged against said proceeds as hereinabove provided, shall be applied as follows:

(1) To the payment of the amount found by this decree to be due in respect of the principal of and interest upon the unpledged income bonds and scrip certificates, with interest on said amount from the date of this decree to the date fixed for the payment thereof at the rate of seven per cent per annum, and the amount hereafter adjudged to be due in respect of the principal of and interest upon the $400,000 principal amount of income bonds pledged to secure the loan mentioned in subdivision (c) of paragraph (17) of this decree. If the funds applicable to such payment shall not be sufficient to pay in full the amount so due in respect of the principal of and interest upon the unpledged income bonds and scrip certificates, with interest on said amount from the date of this decree to the date fixed for the payment thereof at the rate of seven per cent per annum, and the amount hereafter adjudged to be due in respect to the principal of and interest upon said $400,000 principal amount of income bonds, then said funds shall be distributed among the holders of the income bonds and of the scrip certificates representing fractional interests in income bonds ratably to the aggregate amount of such unpaid principal and interest without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest; provided, however, that if at the time of such payment any of the income bonds or scrip certificates representing fractional interests in income bonds be held as collateral security, the several holders thereof shall in no event be paid more than the respective amounts due and unpaid upon the respective obligation or obligations for the payment of which said bonds or scrip certificates may be held as collateral.

(2) Any residue shall be dealt with as this court may direct.

C. The proceeds of the sale of unmortgaged property, after deducting the proportion of expenses charged against said proceeds as hereinabove provided, shall be dealt with as this court may direct.

All questions relating to compensation, charges, allowances, costs, disbursements, and expenses not heretofore or hereby disposed of are hereby reserved by this court for further hearing and determination, and all payments to be made therefor, unless agreed upon by the parties in interest and unless otherwise provided in this decree, shall be hereafter determined by this court.

Article XXIII. Disallowance of unfiled claims and injunction.

Said receiver of said Atlanta, Birmingham & Atlantic Railway Company shall publish as soon as may be after the entry of this decree, and at least once a week for four successive weeks in a newspaper of general circulation published in the city of Atlanta, Georgia, and in a newspaper of general circulation published in the city of Birmingham, Alabama, and in The Brunswick News, a notice requiring the holders of all claims, debts, and demands against said Atlanta, Birmingham & Atlantic Railway Company and/or against said Atlantic & Birmingham Railway Company and/or against the property hereby directed to be sold or any part thereof to file the same with said receiver on or before a certain date to be specified in such notice, which date shall be not less than thirty days from the first publication thereof, and any such claim, debt, or demand not so filed shall not be enforceable against said receiver or against the property sold under this decree or any part or portion of said property or against any purchaser, or entitled to share in the distribution of the proceeds of any sale under this decree; provided, however, that the provisions hereinabove in this Article XXIII contained shall not be deemed to require the filing of any claim already asserted by intervention in the above-entitled causes or any of them, or of any claim by the trustee under the first mortgage or the trustee under the first and refunding mortgage or the trustee under the income mortgage or the holders of any bonds outstanding under any of said mortgages and shall not be deemed to affect the charges mentioned in subparagraph (a) of Article XXVI hereof.

All claims so filed shall contain a statement setting forth any claim as to preferential payment, specifying therein the extent to which preferential payment is claimed and the grounds upon which such claim is based; and all persons who shall fail to make claim to preferential payment as aforesaid on or before the date to be specified in the aforesaid notice shall be barred thereafter from asserting any claim for preferential payment.

Said receiver shall make and file in the above-entitled causes as soon as may be his report showing his action in the premises. Such report shall contain a statement in reasonable detail showing the nature and amounts of the claims, debts, and demands filed with him, and his conclusions and recommendations with respect to the correctness, validity, and preferential character, if any, thereof.

All the parties to the above-entitled causes and each thereof are, and each such party is, excepting always the trustee under the first and refunding mortgage, hereby permanently enjoined and restrained, except as provided in Article XXVI of this decree, from commencing or prosecuting in any court whatsoever any action, suit, or other proceeding at law or in equity against the purchaser of said property, or his successors or assigns, or any proceeding in rem by attachment or otherwise against the property so sold or any part thereof, upon or for the purpose of enforceing any claim, debt, or demand contracted or incurred by said Atlanta, Birmingham

& Atlantic Railway Company or by said Atlantic & Birmingham Railway Company prior to the entry of this decree, without leave of this court first had and obtained upon application made in the above-entitled causes, and for the purpose of hearing and determining any applications for leave to commence such suits, actions, or other proceedings and for the enforcement of this decree against any person or persons violating the foregoing provisions of this decree this court reserves and retains jurisdiction of the above-entitled causes and each thereof and over the parties thereto and the property which is the subject matter thereof.

As used in this decree, the term "party" to the above-entitled causes or any thereof is intended and shall be deemed to mean and include all holders of first mortgage bonds, all holders of the first and refunding mortgage bonds, all holders of income bonds and scrip certificates, and also all creditors and stockholders of said Atlanta, Birmingham & Atlantic Railway Company and of said Atlantic & Birmingham Railway Company, whether or not any such creditor or stockholder shall have filed proof or notice of any claim in the above-entitled causes or any thereof; and all such bondholders, creditors, and stockholders are by representation parties to the above-entitled consolidated cause and are bound by all the proceedings taken in the above-entitled causes and each thereof.

Article XXIV. Distribution on bonds and coupons

When the amounts payable out of the proceeds of sale upon the first mortgage bonds and appurtenant coupons shall have been determined, the special master shall give notice of the time and place where the first mortgage bonds and coupons may be presented for payment, by publication at least once a week for two consecutive weeks previous to the day so fixed in a newspaper published in the city of Atlanta, Georgia, in a newspaper published in the city of Boston, Massachusetts, and in a newspaper published in the city of New York, New York. The holders of first mortgage bonds and appurtenant coupons who shall fail to present the same for payment at the time and place specified in such notice shall not be entitled to payment of any interest thereon out of the proceeds of sale after the date so fixed and of which notice shall have been given as hereinbefore provided. The special master may select such place or places for such presentation as may be most convenient and may make any such payment either personally or through the trustee under the first mortgage or any other agents selected by the special master.

When the amounts payable out of the proceeds of sale upon the income bonds and scrip certificates representing fractional interests in income bonds shall have been determined, the special master shall give notice of the time and place where income bonds and scrip certificates may be presented for payment, by publication at least once a week for two consecutive weeks previous to the day so fixed in a newspaper published in the city of Atlanta, Georgia, and in a news-

paper published in the city of New York, New York. The holders of income bonds and scrip certificates representing fractional interests in income bonds who shall fail to present the same for payment at the time and place specified in such notice shall not be entitled to payment of any interest thereon out of the proceeds of sale after the date so fixed, and of which notice shall have been given as hereinbefore provided. The special master may select such place or places for such presentation as may be most convenient and may make any such payment either personally or through the trustee under the income mortgage or any other agents selected by the special master.

Article XXV. Deficiency judgments

When the amount applicable to the payment of the debt secured by the first mortgage shall have been determined, said Old Colony Trust Company, as trustee, may apply to this court for judgment against said Atlantic & Birmingham Railway Company and/or said Atlantic, Birmingham & Atlantic Railway Company for the amount remaining unpaid on account of said debt and shall be entitled to execution on said judgment in accordance with the practice of this court. No adjudication is now made as to whether or not said Old Colony Trust Company, as trustee, shall be entitled to judgment and execution against said Atlanta, Birmingham & Atlantic Railway Company.

When the amount applicable to the payment of the debt secured by the income mortgage shall have been determined, said Columbia Trust Company, as trustee, may apply to this court for judgment against said Atlanta, Birmingham & Atlantic Railway Company for the amount remaining unpaid on account of said debt and shall be entitled to execution on said judgment in accordance with the practice of this court.

Article XXVI. Property to be sold subject to certain liens and conditions

The property hereby directed to be sold shall be sold (i) subject to the lien of any taxes, assessments, and other public charges which may be a lien on said property or any part thereof, (ii) subject to the lien of the first and refunding mortgage, as to the property adjudged in paragraph (32) of this decree to be subject to the prior and superior lien thereof to the extent so adjudged and as to any other property which may be subject to the lien thereof to such extent as may be finally determined (not, however, including the property hereby and hereafter adjudged to be subject to the prior and superior lien of the first mortgage), and (iii) subject, in the event and to the extent that any of the following instruments may constitute valid and subsisting prior liens upon, or valid and subsisting prior interests in, any of said property, to the lien or interest created by the said instruments:

(1) Agreement dated January 15, 1920, between said Atlanta, Birmingham & Atlantic Railway Company and the Director General of Railroads, known as equipment trust No. 3, under which there are now outstanding notes in the aggregate principal amount of $655,000;

(2) Agreement dated March 12, 1925, between said receiver and Georgia Car & Locomotive Company under which there are now outstanding notes in the aggregate principal amount of $150,000;

(3) Agreement dated August 31, 1925, between said receiver and Virginia Bridge & Iron Company securing notes issued or to be issued in the principal amount of $257,000; and

(4) Agreement dated January 28, 1926, between said receiver and Virginia Bridge & Iron Company securing notes issued or to be issued in the principal amount of $75,000.

This decree shall not be construed or deemed to have the effect of adjudicating the priority, validity or extent of any of said prior liens or interests, except as hereinabove in clause (ii) otherwise specified.

The purchaser of the property hereby directed to be sold, his successors and assigns, shall as part of the consideration for, and as part of the purchase price of, the property purchased, and in addition to the sums bid for the property hereby directed to be sold and elsewhere in this decree required to be paid, take such property and receive the deeds or other instruments of conveyance and transfer thereof upon the express condition that such property shall be charged with the payment, satisfaction and discharge of the following:

(a) Any compensation which has been or shall be allowed by this court to said receiver or to his solicitors or counsel, any allowances by this court to the solicitors and counsel for said Birmingham Trust and Savings Company, and to the solicitors and counsel for any other parties to the above-entitled causes or any of them, all charges, compensation, allowances, and disbursements of said Old Colony Trust Company, trustee, said The Equitable Trust Company of New York, trustee, and said Irving Bank-Columbia Trust Company, trustee, and any of them, and their respective solicitors and counsel, and any other administration expenses, allowances and disbursements determined by this court;

(b) Any indebtedness, obligations, and liabilities of said receiver incurred in the above-entitled causes or any of them or in the ancillary causes in the discharge of his duties as such receiver between February 25, 1921, and the date of the delivery by him to the purchaser of possession of the property hereby directed to be sold; and

(c) Any claims against said Atlanta, Birmingham & Atlantic Railway Company or against the property hereby directed to be sold or any part thereof which shall have been or shall be adjudged by this court to be prior in lien or superior in equity to the first mortgage bonds and/or the income bonds (to the extent but only to the extent that such claims, if they had not been assumed or paid

by the purchaser, would have been entitled to receive any part of the proceeds of sale before the same would have been distributable to the first mortgage bonds and/or the income bonds);
to the extent that such charges, compensation, allowances, disbursements, indebtedness, obligations, liabilities, and claims shall not have been paid out of the moneys in the possession of the receiver. The purchaser shall from time to time report to this court all amounts payable or paid under subparagraphs (a), (b), and (c) of this article, and the court reserves jurisdiction to require such reports.

In the event that any purchaser shall fail to pay any such charges, compensation, allowances, disbursements, indebtedness, obligations, liabilities, and claims when the same shall be due and demand therefor shall be made, the person or corporation entitled to such payment and any party to the above-entitled causes or any of them may on ten days' notice to such purchaser, his successors or assigns, or his or their solicitors, file a petition in this court to have such claim enforced against the property purchased by such purchaser in accordance with the usual practice of the court in relation to claims of a similar character. Any such purchaser shall have the right to appear and contest the enforcement of such claim and to appeal from any judgment, decree, or order made thereon.

Jurisdiction is hereby retained by this court for the purpose, among others, of enforcing the provisions of this article, and this court reserves the right to retake and resell the property sold pursuant to this decree in case the purchaser thereof shall fail to comply with any judgment, decree or order of this court in respect to the payment of any such claim within twenty days after the entry of the judgment, decree or order requiring such payment, or if an appeal be taken within twenty days after the entry of the order finally affirming such order on appeal; and this court also retains jurisdiction for the purpose of releasing and discharging the property hereby directed to be sold or any part or parts thereof from the provisions of this article upon such terms and provisions as this court may determine.

No purchaser shall be held personally liable under this article for any claim by this article required to be paid, the method herein provided for the enforcement of such claims being exclusive of all other remedies against the purchaser and the property directed to be sold. Such purchaser may at any time file herein a waiver or satisfaction of any claim by anyone entitled to payment thereof, and such waiver or satisfaction shall free the property purchased from such claim.

Any and all indebtedness, obligations, liabilities of and claims against said receiver remaining unpaid at the time of the delivery to the purchaser of the property sold under this decree shall be filed in writing with said receiver within sixty days after the first publication by the receiver of a notice to the holders of such indebtedness, obligations, liabilities, and claims. Such notice shall be published at least once a week for four successive weeks in a newspaper

of general circulation published in the city of Atlanta, Georgia, and in a newspaper of general circulation published in the city of Birmingham, Alabama, upon the request of the purchaser, his successors, or assigns. Any such indebtedness, obligation, liability, or claim not so filed within said period of sixty days shall not be enforceable against said receiver or against the property sold under this decree or any part or portion of said property or against any purchaser, or entitled to share in the distribution of the proceeds of any sale under this decree.

Article XXVII. Receiver to file statement

Said receiver shall, not more than twenty (20) nor less than five (5) days prior to the date fixed for the sale under this decree of the property hereby directed to be sold, file with the clerk of this court a statement or statements showing, as definitely as practicable:

(a) All taxes and assessments levied against the property hereby directed to be sold or any part thereof then remaining unpaid.

(b) All indebtedness, obligations, and liabilities contracted or incurred by said receiver then remaining unpaid, other than counsel fees.

(c) All unpaid claims against said Atlanta, Birmingham & Atlantic Railway Company which, so far as said receiver is informed, are claimed to be prior in lien or superior in equity to the first mortgage bonds and/or the income bonds.

(d) All outstanding contracts and leases to which said Atlantic & Birmingham Railway Company and said Atlanta, Birmingham & Atlantic Railway Company or said receiver may be parties, stating in the case of contracts or leases to which said Atlantic & Birmingham Railway Company and said Atlanta, Birmingham & Atlantic Railway Company are parties, whether such contracts or leases have been adopted or disaffirmed by said receiver.

(e) All cash and investments of cash in the possession or under the control of said receiver and all moneys owing to him.

Every such statement mentioned in this article shall be advisory only and shall in no wise constitute a representation or warranty, and no such statement shall constitute ground for relief from any bid because of any representation or statement therein or omission therefrom, nor shall anything contained in any such statement be binding upon the receiver or upon any purchaser at any sale under this decree or upon any party to the above-entitled causes or any of them. All purchases shall be deemed to be made in reliance upon the purchaser's own knowledge or information as to the property purchased and as to all matters relating thereto.

Article XXVIII. Conveyances to purchaser

Upon confirmation of the sale and upon payment by any purchaser, or his assigns, of the purchase price of such portion thereof as shall pursuant to the provisions of this decree be required to be

paid in advance of the delivery of the deed or other instruments of conveyance and transfer by the special master, or upon the making by such purchaser or his assigns of such provision for the payment thereof as this court shall approve, the special master shall execute and deliver a deed or deeds or other proper instruments conveying, assigning, and transferring to such purchaser or his assigns the property sold to such purchaser, subject, however, to the further provisions of this article. B. L. Bugg, as receiver in the above-entitled causes and each of them, and any other person or persons having possession of the property so conveyed and transferred or any part thereof, shall thereupon deliver possession thereof to the grantee or grantees named in said conveyance, and such grantee shall after such delivery of possession hold, possess, and enjoy the property so conveyed and transferred, and every part and parcel thereof, free from the trust and lien, if any, imposed thereon by the first mortgage, free from the trust and lien, if any, imposed thereon by the income mortgage, and, subject to the provisions of Article XXVI of this decree, free from all claims, rights, interest, or equity of redemption of in or to the same by or of said Atlanta, Birmingham & Atlantic Railway Company, its successors and assigns, and by or of said Atlantic & Birmingham Railway Company, its successors and assigns, and by or of the creditors and stockholders of said Atlanta, Birmingham & Atlantic Railway Company or said Atlantic & Birmingham Railway Company, and by or of all persons claiming by, under or through said Atlanta, Birmingham & Atlantic Railway Company or said Atlantic & Birmingham Railway Company, their creditors or their stockholders, and by or of all parties to the above-entitled causes or any of them, excepting always the trustee under the first and refunding mortgage, and by or of all persons claiming under them or any of them.

This court hereby reserves the exclusive power and jurisdiction to transfer and deliver to any purchaser title to and possession of any property hereby directed to be sold, and to determine any and all controversies as to the character, extent, nature, priority, and validity of the title and possession acquired by such purchaser.

Said Atlanta, Birmingham & Atlantic Railway Company shall at the time of the execution of any deed or deeds or instruments of conveyance, transfer, and assignment by the special master, by way of further assurance, make and deliver a similar deed or deeds or other instruments of conveyance, assignment, and transfer to the grantee or grantees in such deed or instruments of conveyance of the special master, or if any such purchaser, or his assigns, shall so request, shall join with the special master in the execution of the deed or deeds or instruments of conveyance, assignment, and transfer to be made by the special master, and said Atlanta, Birmingham & Atlantic Railway Company shall thereby grant, convey, transfer, assign, and release to such grantee or grantees all its right, title, and interest of, in, and to the property so conveyed, assigned, and transferred by the special master or intended so to be.

Said B. L. Bugg, as receiver in the above-entitled causes and each of them, shall also at the time of the delivery of any deed or deeds or instruments of conveyance, transfer, and assignment by the special master, make and deliver to the grantee or grantees in such deed or deeds or other instrument or instruments of conveyance of the special master a sufficient deed or deeds or other instruments of conveyance, assignment, and transfer, or if any such purchaser, or his assigns, shall so request, shall join with the special master in the execution of the deed or deeds or instruments of conveyance, assignment, and transfer to be made by the special master, and said receiver shall thereby grant, convey, transfer, assign, and release to the purchaser or his assigns all his right, title, and interest as receiver as aforesaid in and to the property vested or standing in his name or to which he may have acquired title as receiver as aforesaid, and so transferred, assigned, and conveyed by the special master, subject, however, as aforesaid. Said receiver shall also at the time of the delivery of the deed or deeds or other instruments of conveyance by the special master deliver to the grantee or grantees in such deed or deeds or other instrument or instruments of conveyance all muniments of title, books, documents, or other papers in his possession or control relating to or concerning or useful in connection with the property embraced in such instrument or instruments of conveyance, except only such as he must temporarily retain for the purpose of his final accounting or for the purpose of prosecuting and defending pending litigation. Said receiver, at the time of the delivery of the deed or deeds or other instruments of conveyance by the special master, shall also assign, transfer, and deliver all cash, investments of cash, accounts, and notes receivable, materials and supplies, and other current assets then in the possession of the receiver to the grantee of the property sold, subject, however, to the provisions of subparagraph (b) of subdivision III of Article XXXII of this decree as to the fund in said subparagraph mentioned.

Said Old Colony Trust Company, as trustee, at the time of the execution of the deed or deeds or other instruments of conveyance, assignment, or transfer thereof by the special master, shall release by a proper instrument to the grantee or grantees in such deed or deeds or other instrument or instruments of conveyance of the special master all its right, title, and interest as trustee under the first mortgage of, in, and to the property so conveyed, assigned, or transferred by the special master.

Said Irving Bank-Columbia Trust Company, as trustee, at the time of the execution of the deed or deeds or other instruments of conveyance, assignment, or transfer thereof by the special master, shall release by a proper instrument to the grantee or grantees in such deed or deeds or other instrument or instruments of conveyance of the special master all its right, title, and interest as trustee under the income mortgage, of, in, and to the property so conveyed, assigned, or transferred by the special master.

Article XXIX. Appearance of purchaser

The purchaser of the property hereby directed to be sold shall have the right to enter his appearance in the above-entitled causes and each of them, and he and any party to the above-entitled causes or any of them shall have the right to contest any claim, demand, or allowance existing at the time of the sale and then undetermined, and he may appeal from any decision relating to any such claim, demand, or allowance.

Wherever used in this decree the expression "the purchaser" shall be deemed to include the plural as well as the singular and shall be deemed to include any person or persons in any manner succeeding or entitled to succeed to the possession or title of the property hereby directed to be sold or any part thereof, whether such person shall have received or shall be entitled to receive such possession or title by delivery or assignment from the special master, said receiver, or the original purchaser or otherwise.

Article XXX. Disavowal of contracts and rejection of property by purchaser.

Any purchaser of the property hereby directed to be sold, and the successors or assigns of such purchaser, shall have the right, within six months from the date of confirmation of the sale or within such additional period as this court may hereafter by its order or decree permit, to elect whether or not to adopt or continue in force or to refuse to adopt any lease, traffic or operating agreement, or other executory contract made by said Atlanta, Birmingham & Atlantic Railway Company or said Atlantic & Birmingham Railway Company (other than leases and contracts affirmed or assumed by said receiver) which may be included in the property sold to such purchaser or which may be incident or appurtenant thereto. Such election shall be made by instrument in writing subscribed by such purchaser, his successors or assigns, and filed in the office of the clerk of this court, and no user of rights or other conduct within such period of six months or within such additional period, unaccompanied by the filing of such written instrument, shall be deemed to conclude such purchaser, his successors or assigns, in respect of such election. In the event of the failure of such purchaser, his successors or assigns, to file a statement of election to refuse to adopt any such lease, traffic or operating agreement, or contract within such period of six months or such additional period, he shall be deemed to have elected to adopt such lease, traffic or operating agreement, or other executory contract and to accept the same as part of the property purchased. In the event that such purchaser shall elect not to adopt any such lease, traffic or operating agreement, or other executory contract, he shall reassign and retransfer all his right, title, and interest in the same to said Atlanta, Birmingham & Atlantic Railway Company or to such other corporation or person as

this court shall direct, without deduction, however, for the sum paid or payable by such purchaser on account of the purchase thereof; provided, however, that the right of election hereby reserved to such purchaser, his successors or assigns, shall not apply to any contract, lease, or agreement heretofore or hereafter lawfully entered into by said receiver or heretofore or hereafter lawfully affirmed or assumed by said receiver, but any and all such contracts, leases, or agreements must be adopted and carried out by such purchaser unless the right to elect to adopt or terminate be reserved by the terms thereof to said receiver or such purchaser.

Any purchaser of the property hereby directed to be sold and the successors and assigns of any such purchaser shall have the right to elect not to take or accept any part of the property sold to such purchaser by written notice of his election given to the special master at any time prior to the execution and delivery of the deed or other instrument of conveyance or transfer by the special master. No such election by a purchaser, his successors or assigns, shall diminish or affect the purchase price to be paid by such purchaser. The deeds or other instrument of conveyance or transfer shall expressly except therefrom any property which such purchaser shall so elect not to take or accept.

Article XXXI. Matters reserved

All questions and issues with respect to the earnings, revenues, issues, profits, and other income of the property now in the possession or under the control of this court in the above-entitled causes, or any of them, or hereafter to come into such possession or under such control, not disposed of by this decree, and all questions and issues with respect to any diversion of such earnings, revenues, issues, profits, and other income, or with respect to any rights of exoneration, contribution, or subrogation now or hereafter existing in favor of any party to the above-entitled causes, or any of them, or in favor of the holder of any debt or liability of said Atlantic & Birmingham Railway Company or said Atlanta, Birmingham & Atlantic Railway Company, or in favor of the purchaser of any property by this decree directed to be sold, his successors or assigns, not disposed of by this decree are hereby reserved by this court for future determination.

All other matters not by this decree determined are reserved by this court for future determination. Any party to the above-entitled causes, or any of them, or any claimant or other person whose rights are affected or determined by any of the provisions of this decree, or the purchaser at the sale hereinabove referred to, may at any time apply to this court for further order and direction touching the matters hereby reserved for determination by the court. The April, 1926, equity term of this court is extended until after the complete execution of the provisions of this decree and until after the final determination and disposition of all matters herein reserved for future determination or action by this court, and said equity term

is extended in any event for a period of one year from the date of this decree with leave to any party to the above-entitled causes or any thereof, at any time prior to the expiration of said period of three years, to apply to this court for a further extension of said term.

Article XXXII. Property directed to be sold

The following is a description of the property hereby directed to be sold:

All the property and assets of every kind and character of said Atlanta, Birmingham & Atlantic Railway Company and/or of said B. L. Bugg as receiver of said Atlanta, Birmingham & Atlantic Railway Company, including (without intending that said property and assets be in any manner limited to or restricted by the specification of the property and assets hereinafter more particularly described) the following property and assets:

I.

(a) All that certain line of railroad, beginning in or at the city of Brunswick, in the county of Glynn, and running thence, through the counties of Glynn, Brantley, Pierce, Bacon, Wilcox, Coffee, Irwin, Ben Hill, Turner, Crisp, Dooly, Macon, Taylor, Talbot, Meriwether, Coweta, Fayette, Campbell, and Fulton, to and into the city of Atlanta, in said county of Fulton, all in the State of Georgia, and also that certain branch line of railroad beginning in or at the town of Sessoms, in said county of Bacon, and running thence through said county of Bacon and the county of Ware to and into the city of Waycross, in said county of Ware, all in the State of Georgia, and also that branch line of railroad beginning in or at the city of Fitzgerald, in said county of Ben Hill, and running thence through said counties of Ben Hill and Irwin and through the counties of Tift, Colquitt, and Thomas to and into the city of Thomasville, in said county of Thomas, all in the State of Georgia;

(b) All that certain line of railroad, beginning in or at the town of Manchester, in said county of Meriwether, and running thence through said county of Meriwether and the county of Troup, all in the State of Georgia, and through the counties of Chambers, Randolph, Clay, Talladega, Shelby, and Jefferson, all in the State of Alabama, to and into the city of Birmingham, in said county of Jefferson, State of Alabama;

(c) All branches, sidings, tracks, yards, terminals, stations, buildings, towers, freight houses, roundhouses, turntable, shops, telephone lines, telegraph lines, and all property of every kind and description, real or personal, now used or operated in connection with any of said lines of railroad;

(d) All those certain parcels situated in the county of Duval, State of Florida, more particularly described in an indenture dated

August 23, 1917, between said Atlanta, Birmingham & Atlantic Railway Company and said The Equitable Trust Company of New York, as trustee, recorded in the public records of Duval County, Florida, on November 8, 1917, in mortgage book No. 113 on page No. 534.

Together with all and singular the tenements, hereditaments, and appurtenances belonging or in anywise appertaining to said lines of railroad and the branches and extensions thereof and the other properties hereinabove mentioned, or to any part thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, as well in law as in equity, of said Atlanta, Birmingham & Atlantic Railway Company and/or said B. L. Bugg, as receiver as aforesaid, in and to the same and every part and parcel thereof, and any and all corporate or other rights, privileges, and franchises (including the franchise of being a corporation) which said Atlanta, Birmingham & Atlantic Railway Company and/or said B. L. Bugg, as receiver as aforesaid, now has, for or appertaining to the ownership, construction, maintenance, use, and/or operation of the lines of railroad and other properties hereinabove mentioned.

II

The following locomotives, cars and equipment:

A. Locomotives, cars and equipment in service as follows:

	Number
Locomotives:	
Freight	40
Passenger	13
Freight and Passenger	17
Switching	10
Total locomotives	80
Freight train cars:	
Box cars	877
Flat cars	282
Stock cars	24
Coal cars	703
Caboose cars	45
Other freight train cars	29
Total freight train cars	1960
Passenger-train cars:	
Coaches	32
Combination passenger cars	2
Other combination cars	13
Baggage and express cars	6
Other passenger train cars	1
Total passenger train cars	54
Company service equipment:	
Business cars	2
Ballast cars	2
Derrick cars	2
Other company service cars	111
Total company service cars	118
Grand total all cars in service	2,132

B. Forty-five (45) 50-ton steel underframe, composite hopper coal cars, which were under construction at March 31, 1926.

C. One hundred (100) 40-ton steel underframe flat cars to be constructed pursuant to contract executed January 28, 1926, pursuant to court order dated January 16, 1926.

III

All right, title, interest, and demand of said Atlanta, Birmingham & Atlantic Railway Company and/or said B. L. Bugg, as receiver as aforesaid, and/or said Irving Bank-Columbia Trust Company, as trustee as aforesaid, and/or said Old Colony Trust Company, as trustee as aforesaid, in and to the following special funds, subject to withdrawals and additions prior to the delivery of possession to the purchasers:

(a) A fund on deposit with Fulton National Bank representing proceeds of sale of telephone line between Douglas and Waycross, with interest thereon, amounting at February 28, 1926, to $509.25

(b) A fund on deposit with the Equitable Trust Company of New York, representing the proceeds of sale of certain properties released from the lien of the first and refunding mortgage, amounting (with interest accrued thereon to April 1, 1926) on April 23, 1926, to 167,818.84

Provided, however, that, until the first and refunding mortgage shall have been satisfied, said fund (except any portion thereof which may, by an order of this court made after due notice to the trustee under the first and refunding mortgage, be adjudged to represent the proceeds of property subject at the time of its sale to the prior and superior lien of the first mortgage) shall be held separate and apart by the purchaser, its successors and assigns, as proceeds of property subject at the time of its sale to the prior and superior lien of the first and refunding mortgage, and shall only be paid out, with the approval of the trustee under the first and refunding mortgage, for the purposes in article eighth of the first and refunding mortgage provided.

(c) fund held by Guaranty Trust Company of New York representing proceeds of insurance on destroyed cars, with interest thereon, amounting at February 28, 1926, to $1,252.28

IV

$5,000 par value of the common stock of Atlantic Compress Company, Atlanta, Georgia.

V

All the right, title, and interest of said Atlanta, Birmingham & Atlantic Railway Company, and/or said receiver and/or said Irving Bank-Columbia Trust Company, as trustee as aforesaid,

and/or Old Colony Trust Company, as trustee as aforesaid, to receive upon the satisfaction of the first and refunding mortgage any and all securities and/or cash then held by the trustee thereunder.

VI

All and singular the property and franchises of every nature and description whatsoever which on November 1, 1915, belonged to said Atlanta, Birmingham & Atlantic Railway Company or were thereafter acquired by it or by said B. L. Bugg, as receiver as aforesaid, or in or to which it then had or it or its said receiver thereafter acquired or had any estate, right, title, interest, property, possession, claim, or demand whatsoever, and not subsequently released from the lien of the income mortgage, including specifically all lands, tenements, hereditaments, and appurtenances thereto and all buildings, structures, fixtures, and other improvements; all lines of railroad, branches, sidings, tracks, yards, terminals, stations, buildings, towers, freight houses, roundhouses, turntables, shops, machinery, tools, telephone lines, telegraph lines, fences, bridges, locomotives, cars, and other equipment and rolling stock; all materials, coal, oil, and other supplies; all maps, drawings, profiles, records, deeds, patents, patent rights, copyrights, licenses, and processes; all cash, investments of cash, bank accounts, deposits, loans, bills and notes receivable, traffic and car service balances, and other receivables, claims, advances, stocks, bonds, notes, and other securities, contracts, agreements, consents, leases, leaseholds, assignments and other rights and interests; and any and all other property, real and personal, tangible and intangible, of whatsoever nature and description.

Article XXXIII. Hearing on plan of reorganization

A copy of the plan and agreement of reorganization, dated February 23, 1926 (hereinafter called the plan), for the reorganization of said Atlanta, Birmingham & Atlantic Railway Company has been filed in the above-entitled consolidated cause in the office of the clerk of this court. Reference is made to the plan for the provisions thereof.

This court will hear at the place and time hereinafter specified all such complaints or objections as to the fairness, timeliness, and equitableness of the plan and of the offers made or to be made thereunder as are presented or made by any and all parties to the above-entitled causes or any of them, any and all bondholders, creditors, and/or stockholders of Atlanta, Birmingham & Atlantic Railway Company and/or Atlantic & Birmingham Railway Company, any and all holders of claims against said companies or either of them, or against B. L. Bugg, as receiver of said Atlanta,

Birmingham & Atlantic Railway Company, and/or any and all persons interested in or claiming an interest in the property and assets of Atlanta, Birmingham & Atlantic Railway Company and/or B. L. Bugg as receiver thereof; and this court reserves jurisdiction to determine whether the plan and the offers made or to be made thereunder are fair, timely, and equitable. Such complaints or objections will be heard by this court at the courtroom of the District Court of the United States for the Northern District of Georgia, Northern Division, in the city of Atlanta, Georgia, at 10.00 o'clock in the forenoon on May 14, 1926, unless hereinafter otherwise ordered. All persons, parties, firms, associations, and or corporations who make no complaint or objection at said time and place shall be forever barred from making any complaint or objection.

The receiver shall cause notice of such hearing to be published on or before May 4, 1926, and on May 10, 1926, in the Atlanta Constitution, a newspaper of general circulation regularly printed, published, and issued in the city of Atlanta, Georgia, and in the New York Evening Post, a newspaper of general circulation, regularly printed, published, and issued in the borough of Manhattan, city and State of New York, and in the Boston Evening Transcript, a newspaper of general circulation, regularly printed, published, and issued in the city of Boston, Massachusetts.

SAML. H. SIBLEY,
United States District Judge.

NOTE.—The foregoing decree was filed in the office of the clerk of the District Court of the United States for the Northern District of Georgia, Northern Division, on May 1, 1926.

UNITED STATES OF AMERICA,
Northern District of Georgia, Northern Division.

I, O. C. Fuller, clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached 72 pages of printing and writing contains a true, full, correct, and complete copy of the original decree of foreclosure and sale, in the case of Birmingham Trust and Savings Company (V. No. 156, consolidated cause), Atlanta, Birmingham and Atlantic Railway Company and the constituent causes in equity Nos. 156, 188, 187, and 190, as fully as the same remains on file and of record in my office at Atlanta, Georgia.

In testimony whereof I hereunto set my [redacted] and the seal of the said District Court, at the city of Atlan[redacted]eorgia, this the 10th day of May, A. D. 1926.

[SEAL.] O. C. FULLER,
Clerk U. S. District Court for the Northern District of Georgia.

57 In the District Court of the United States for the Northern District of Georgia, Northern Division

March term, A. D. 1926

BIRMINGHAM TRUST & SAVINGS COMPANY, plaintiff v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, defendant	No. 156, in equity. Consolidated causes in equity.

and

OLD COLONY TRUST COMPANY, TRUSTEE, PLAINTIFF v. ATLANTIC & BIRMINGHAM RAILWAY COMPANY et al., defendants	No. 188 in equity.

Exhibit 2—*Opinion of the court on objections of stockholders to decree offered by bondholders and creditors.*

[Stamped:] Interstate Commerce Commission. Ex. No. 2. Applicant's Docket No. 5454, 5470. Date, May 20, 1926.

On April 30th there was presented to the court by bondholders and certain creditors a form of decree in which provision was made for foreclosure and sale of the properties and franchises of the A., B. & A. Railroad. Upon the tender of such form of decree the court was requested by counsel representing a stockholders protective committee to be permitted to address the court respecting the matter of and in opposition to the signing of such decree. The appearance of counsel for the stockholders took such form, because it was not until April 24th that the stockholders, through W. A. Gunter, individually and in his representative capacity, filed a petition for leave to intervene. And since as to such petition a rule nisi was issued, returnable not until May 22nd, appearance of Counsel for such stockholders on April 30th, was by leave of court and not by any determination of the question whether or not the stockholders are entitled to be and become parties to receivership proceedings of this character.

It was under such circumstances that counsel for the stockholders presented to the court the following situation of facts as viewed by the stockholders and certain contentions arising therefrom which will hereinafter be enumerated:

It was acknowledged that when in 1921 a creditor of the railroad filed in this court a petition alleging insolvency and requesting the appointment of receiver the officers of the railroad by apparent au-

thority vested in them as managers admitted the fact of such then existing insolvency and consented to the receivership being instituted. Later on various trustees for bondholders separately filed their petitions for foreclosure and independently asked for appointment of a receiver. Thereupon the court made a new order responsive to such foreclosure petitions and made the receivership as much in behalf of the bondholders as in behalf of creditors.

During such earlier stages of the matter the road appeared to be in very great distress and perhaps there was little hope at such time that its affairs could ever be worked out other than by eventual sale of the properties and franchises. Counsel emphasized that not only by virtue of such particular circumstances but by reason of the very nature of stockholder interest in railroad and other large utility corporations there was not then nor for a long time was there any organization of stockholder interests designed to aid the court in its determination of a proper course of receivership management or to devise or participate in any plan having for its purpose protection of the interests of stockholders.

However, by virtue of newspaper publicity, it lately became known that the bondholders had effectuated some character of arrangement with another railroad by means of which it was at least expected, if not intended, that the properties should be sold under foreclosure and bought in by the payment of sufficient cash to clear up miscellaneous indebtedness and by surrender of the bonds. In other words, in substance, it had been announced and was generally understood that the bondholders planned to buy the property in by making payment with their own bonds plus the sum of cash sufficient to clear the other indebtedness and to settle with dissenting bondholders. A new corporation then was to be formed which would issue its preferred stock to existing bondholders in a determined ratio and which would also issue two hundred and fifty thousand shares of nonpar common stock. As understood by the stockholders, such plan of reorganization contemplated no provision whatsoever for the stockholders of the existing railroad.

Attention of the court was called to the fact that as of 1917 the A., B. & A. had been officially valued by the Interstate Commerce Commission at a figure close to $25,000,000.00, which as augmented by later additions and betterments and by allowing for only a part of the enhancement in value arising by virtue of changes in unit prices of materials had made the property physically worth not less than $30,000,000.00 and that at this time the management of the A., B. & A. is contending before the Interstate Commerce Commission that the physical properties are worth at least $40,000,000.00 which figure closely approximates the amount carried in the books of the corporation under the item "Investment in road and equipment."

It was asserted by counsel for the stockholders that characteristically it took the shock of a proposal to reorganize in such way

as to eliminate the stockholders altogether to arouse such stockholders to an appreciation of their own responsibilities and dangers.

Apparent concurrence of the receiver of the railroad in the plan of sale and reorganization and the obvious circumstance that there never is nor can be such thing as competitive bidding, taken in connection with the scattered nature of relatively small unit holdings of the A., B. & A. stock, all had resulted in a determination only two weeks ago to endeavor to arouse the stockholders to the taking of a proper part in these proceedings with a view to the protection of their interests. It was acknowledged that the outstanding bonds aggregate approximately $9,000,000.00 and the miscellaneous debts aggregate approximately $3,000,000.00. It was stated that already, and in advance of complete organization, about one-third of the common stock was represented.

It was contended that while at the time and during the early stages of receivership the railroad was in very bad financial condition yet that the consequences of changed economic conditions, general improvement in operations, and changes in rates have now brought the railroad to a point where instead of operating at a deficit there is being realized a quite substantial sum of net earnings. It was contended that in the year 1925, the results of operation were so favorable as that very large sums could be and were spent for the purpose of rehabilitating the properties and equipment thereby assuring a further economical operation in 1926 and thereafter. It was contended that if earning power should be considered as of equal importance to physical valuation it would require careful and expert investigation and thorough study of the methods of operation and trends of earnings in order that a satisfactory judgment might be reached.

Attention of the court was called to the fact that in the transportation act of Congress of 1920 there are various provisions thought to be designed peculiarly for the extension of aid and relief to the weaker lines of railway. It was pointed out that at this time the A., B. & A. is the only trunk line carrier in southern territory which is in the hands of a receiver and that all other important railroads in such territory are enjoying a very great measure of prosperity. It was urged that such circumstances necessarily must generate inquisitiveness as to why this particular railroad although now making substantial earnings is nevertheless not yet enjoying the same measure of prosperity as other carriers in the South. It was contended that the court by virtue of its control over the receivership proceedings should directly or indirectly institute inquiry into such situation for the purpose of determining whether or not the revenue of the A., B. & A. might in all probability be largely enhanced if proceedings were to be instituted before the Interstate Commerce Commission under the transportation act 1920 with a view to obtaining a larger share of traffic and earnings received from or delivered to connecting carriers. Attention also was called to the fact that in such transportation act provision is made for the recap-

ture of excess earnings of the strong lines and that the funds so realized by the Federal Government are made available for loans to weaker lines in order that they might improve their financial position through acquisition of needed equipment.

It was further stated to the court by counsel for the stockholders that there are now pending various rate revisions which as understood by such counsel would inevitably result in an enhancement of the revenues of the A., B. & A. Railway but that the degree of such aid could not well be determined without proper investigation and study by the court.

Counsel for the stockholders therefore in substance urged the court to delay consideration of the matter of an immediate sale for the purposes of determining through full investigation the following questions: is a sale of the property inevitably necessary; is this the time to undertake a sale; what, if anything, might or could be done to further improve the financial results of operation of the railroad; what in fact is its present and probable state of earnings; and what in any event would be a minimum fair price at which the railroad should be sold if it be determined by the court that a sale must be made.

In respect to the latter contention it was urged upon the court that railroad property is unlike that of ordinary property. It was argued that as a practical matter there is no such thing as competitive bidding at a judicial sale under foreclosure since possible purchasers are limited in the main to other railroads. It was argued that the interest which some other railroad might have in the acquisition of the A., B. & A. or a carrier similarly situated is controlled by various considerations and policy and that when as is thought to be the case here, where only one railroad has manifested any desire to acquire the properties it must be true in the nature of things that such railroad is in a position to dictate the lowest terms which bondholders will agree to.

The court was therefore presented with the argument that to order a sale of the properties in view of such practical and known circumstances would simply give rise to argument and contention after the sale should be made as to whether or not it should be confirmed. It was contended that in matters of this character it is the duty of the court to thresh out in advance the question as to whether or not the property should be sold and at a price which while taking care of the bondholders would eliminate the stockholder interest, altogether and that such determination should express itself in the fixation of an upset price in advance of sale designed to assure no further immediate proceedings which would not in the judgment of the court constitute full equity to all interests including stockholders in the premises.

Expressly the conclusions urged upon the court by the stockholders resolved themselves into the contention that special investiga-

tion should be made by the court directly or through a master concerning the following subjects:

(1) What are the essential facts enabling determination of the question of whether or not a sale of the railroad should be ordered and whether the circumstances make this an appropriate time to do so?

(2) What is the actual earning power of the railroad now and what is its probable immediate future earning power?

(3) What may or might be done to augment the revenues of the railroad through revisions in rates, changes in divisions of through rates with connecting carriers and obtaining a larger share of through traffic in the control of connecting railroads?

(4) What is the approximate present physical valuation of the properties as a whole and by classes?

(5) If a sale should be required, what would be fair minimum price and terms having in view the best interests of all parties concerned?

In presenting the foregoing matters counsel for the stockholders asserted that no policy of mere obstruction was being pursued; that while it was evident the stockholders are late in coming in the circumstances are sufficiently self-explanatory; that it is the desire of the stockholders to render constructive service to the court and the creditors by opening up the above questions for full investigations; that the railroad having been in receivership so long the consumption of necessary additional time to conduct such investigation would not be materially disadvantageous but might be productive of results to aid the court in a better determination of the proper course to pursue; and that in any event during such period of investigation the stockholders would be enabled to perfect their organization and undertake in their own way to develop some other practical plan of reorganization or merger than to throw the railroad on the market for sale at this time to another carrier on terms to be dictated by such other carrier and which would involve the sacrifice of physical properties worth $30,000,000.00 and having a rapidly growing earning power on such terms as while protecting bondholders and other creditors would wipe out altogether the interests of stockholders.

Upon consideration of such presentation by representatives of the stockholders the court rendered the following opinion:

"The stockholders are ordinarily represented by the corporation. They have not been admitted as separate litigants here and there is grave doubt whether they can be, but the court has been glad to hear their counsel as to what should be done so far as its discretion may be involved. I am unable, however, to entertain anything other than some concrete, practical plan for handling the situation, and can not at this late date recognize the right of stockholders to delay matters further by a reference to a master to ascertain the facts about their own railroad. After living intimately with it for the five years of its receivership, I feel that I am in a better position than a master would be to appraise the situation. It must

be remembered that this railroad came into receivership over five years ago on a creditors' bill filed in behalf of all creditors alleging that the railroad was losing in operation over a million dollars per year and was then hopelessly insolvent. This was admitted by the corporation, representing the stockholders, and it joined in the prayer for a receiver. Later the interest on each of the bond mortgages being in default, proceedings to foreclose each of them were instituted and receivership granted to assert their lien on income as well as to preserve the corpus. The operation, however, in spite of every possible retrenchment, continued to be at a loss. Taxes in many counties in two States fell into default to an amount of about four hundred thousand dollars. Several interventions were filed and pressed seeking to sell the road as junk to pay these taxes. Under threat to do this unless the bondholders would take up the fi fas, the latter refused this aid. The stockholders were not regarded as having any possible interest or equity. No one was in prospect who, at any price, would consider buying the property to run it. The receiver could not float certificates on the property as a whole. The court, perhaps somewhat arbitrarily, took the position with the public authorities seeking to junk the road for taxes, that the public had a greater interest in keeping the road going than in collecting taxes, and refused the interventions. The equipment was found to be better security than the road as a whole, and it was separately hypothecated for its own reconstruction and repair. Unless property was sold or leased to promote the locating of enterprises on the line and by patience and skillful effort the receiver has, I think, accomplished almost impossible things in holding together and operating, and even improving the property, though having to hold off many creditors who in strict right were entitled to preferred payment. I am satisfied that this road, however skillfully managed, can hardly sustain itself by its local traffic and can not secure enough through traffic to make it permanently profitable, surrounded as it is by strong systems controling their own business. This has been shown by the entire history of the railroad, as well as by the experience of this last receivership. Nevertheless, in the hands of a strong system, furnishing its traffic to it, its profitableness could be greatly enhanced. The great activity of Florida and prosperity in south Georgia have been reflected in better earnings on this railroad during the past year, and these have brought forward a prospective purchaser. There are now about three hundred thousand dollars of taxes and three million dollars of accumulated operating deficits, and some ten million dollars of mortgage indebtedness, all claiming and entitled to payment. I think the opportunity for a sale ought not to be jeoparized by delay at the suggestion of stockholders only. Their manifest duty, as against their creditors, is to provide some tangible plan for satisfying the debts if they would continue to claim an interest in the corporate property. While railroad property is unique and has met a special protective solicitude from the courts, the fundamental fact can not be escaped that the rights of creditors are above those of stockholders, and the

court can not refuse satisfaction to creditors because stockholders are threatened with loss.

Nothing is now adjudged as to the reasonableness of any bid that may be made or of any plan of reorganization that may be proposed to carry out the bid. All that is held is that a sale ought now to be attempted.

This May 11th, 1926.

SAMUEL H. SIBLEY,
U. S. Judge.

Filed in clerk's office 12th, day of May, 1926.
O. C. FULLER, *Clerk.*
By MOHN DEAN STEWARD, *Deputy Clerk.*

Copy.

CERTIFICATE OF CLERK

UNITED STATES OF AMERICA,
Northern District of Georgia, Northern Division.

I, O. C. FULLER, clerk of the United States District Court, in and for the Northern District of Georgia, do hereby certify that the foregoing 10 pages contains a true, correct, complete, and full copy of the original opinion of the court on objection of stockholders to the decree offered by bondholders and creditors as fully as the same remains on file in the office of the clerk of said court, at Atlanta, Georgia, in the matter of Birmingham Trust and Savings Company against Atlanta, Birmingham & Atlantic Railway Co. and constituent causes has 156, 188, 187 and 190 in equity.

In testimony whereof I hereunto set my hand and affix the seal of the said court, at Atlanta, Georgia, this the 17th day of May, A. D. 1926.

O. C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

58 In the District Court of the United States for the Northern District of Georgia, Northern Division

BIRMINGHAM TRUST AND SAVINGS COMPANY, COMPLAINANT,

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, DEFENDANT

Consolidated cause.

In equity, No. 158

Exhibit 3—Order approving plan

[Stamped:] Interstate Commerce Commission. Ex. No. 3. Applicant's Docket No. 5454, 5470. Date, May 20, 1926.

The above-entitled consolidated cause came on further to be heard at this Term and upon consideration thereof, it was

Found, ordered, adjudged, and decreed, as follows:

1. The plan and agreement of reorganization, dated February 23, 1926 (herein called the plan), for the reorganization of Atlanta, Birmingham & Atlantic Railway Company has been duly filed in said consolidated cause in the office of the clerk of this court. The notice by Article XXXIII of the decree of foreclosure and sale dated April 30, 1926, herein directed to be given has been duly given.

2. Pursuant to said Article XXXIII, a hearing was duly held by this court on May 14, 1926, at 10.00 o'clock in the forenoon, at which hearing all complaints and objections there presented or made as to the fairness, timeliness, and equitableness of the plan and of the offers made or to be made thereunder were duly heard by this court. There was presented at said hearing a copy of an agreement dated February 23, 1926, between Atlantic Coast Line Railroad Company and the committee acting under the deposit agreement dated December 7, 1921, in respect of the fifteen-year five per cent income mortgage gold bonds of said Atlanta, Birmingham & Atlantic Railway Company and the committee acting under the bondholders' agreement, dated September 26, 1921, in respect of the first mortgage five per cent 5-30 gold coupon bonds of Atlantic & Birmingham Railway Company, upon which agreement the plan was based and pursuant to which the plan was promulgated, and also a copy of the application dated April 8, 1926, made to the Interstate Commerce Commission by the reorganization committee constituted by the plan on behalf of Atlanta, Birmingham and Coast Railroad Company, the corporation to be organized to carry out the plan; and said agreement and said application are ordered filed in said consolidated cause.

3. Complaints and objections were made by the following:

Thomas W. Raoul, Mary R. Willis, Rebecca R. Altstartter, Norman Raoul, Elinor Raoul, and Mrs. Mary M. Raoul, holders of first mortgage five per cent 5-30 gold coupon bonds dated as of January 1, 1904, of Atlantic & Birmingham Railway Company and certificates of deposit representing the same issued by Old Colony Trust Company, depositary under the bondholders' agreement dated September 26, 1921, and one of the depositaries under the plan, appearing by Candler, Thomson & Hirsch, their attorneys.

Said complaints and objections are, and each of them is, hereby overruled.

4. A receivership of Atlanta, Birmingham & Atlantic Railway Company is no longer of any benefit to the various persons who have an interest in said company or its property and assets, and it is of advantage to all such persons and to the public that the receivership be terminated at as early a date as possible. The plan offers the only practical means which has been presented to this court, of bringing said receivership to an early termination and is believed to be financially and economically sound.

5. The plan and the offers made or to be made thereunder are fair, timely, and equitable, and the same are hereby in all respects approved.

6. Any and all parties to the above-entitled consolidated cause or any of the constituent causes, any and all creditors, bondholders and or stockholders of Atlanta, Birmingham & Atlantic Railway Company and or Atlantic & Birmingham Railway Company, any and all holders of claims against said companies or either of them or against B. L. Bugg, as receiver of said Atlanta, Birmingham & Atlantic Railway Company, and or any and all persons interested in or claiming an interest in the property and assets of Atlanta, Birmingham & Atlantic Railway Company and or B. L. Bugg as receiver thereof, have had reasonable opportunity heretofore to make and present to the court their complaints and objections to the plan and said offers, and all persons, parties, firms, associations, and or corporations are forever barred from making any complaint or objection to the plan on said offers.

7. This court hereby reserves jurisdiction to approve or disapprove any action heretofore or hereafter taken or proposed to be taken under the plan in respect of any or all of the following matters, and such reservation is hereby made a term and condition of the approval hereinabove contained:

(a) Any action or proposed action fixing or limiting the period within which deposits may be made under the plan and within which any holder of any of the bonds may assent to and become party to the plan;

(b) Any action or proposed action declining to receive or accept the deposit of any particular bonds, or the assent of any particular bondholder, or declining further to represent any particular bonds theretofore represented while continuing to represent the remaining bonds; and

(c) Any action or proposed action changing or modifying the plan or any part thereof.

Dated, Atlanta, May 15th, 1926.

SAMUEL H. SIBLEY,
United States District Judge.

CERTIFICATE OF CLERK

UNITED STATES OF AMERICA,
Northern District of Georgia, Northern Division.

I, O. C. Fuller, clerk of the United States District Court, in and for the Northern District of Georgia, do hereby certify that the foregoing 4 pages contains a true, correct, complete, and full copy of the original decree approving plan of reorganization as fully as the same remains on file in the office of the clerk of said court, at Atlanta, Georgia, in the matter of Birmingham Trust and Savings Company against Atlanta, Birmingham and Atlantic Railway Company and constituent causes Nos. 156, 188, 187, and 190 in equity.

In testimony whereof I hereunto set my hand and affix the seal of the said court, at Atlanta, Georgia, this the 17th day of May, A. D. 1926.

O. C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

59 *Exhibit 5—Reorganization of Atlanta, Birmingham and Atlantic Railway Company—Agreement between Atlantic Coast Line Railroad Company and committees, dated February 23, 1926*

[Stamped:] Interstate Commerce Commission. Ex. No. 5. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Warren.

AGREEMENT made this 23rd day of February, 1926, between George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under the deposit agreement dated December 7, 1921, with respect to the fifteen-year five per cent income mortgage gold bonds of Atlanta, Birmingham and Atlantic Railway Company, and Francis R. Hart, James H. Perkins, Percy R. Pyne 2nd, F. J. Lisman, and George Bramwell Baker, as the committee acting under the bondholders' agreement dated September 26, 1921, in respect of the first mortgage five per cent 5/50 gold coupon bonds of Atlantic & Birmingham Railway Company (said committees being hereinafter called the committees and said bonds of both issues being hereinafter called the bonds) and Atlantic Coast Line Railroad Company (hereinafter called the railroad company).

The mortgages securing the bonds are in the process of foreclosure in the United States District Court for the Northern District of Georgia, as the court of primary jurisdiction, and also in the United States District Courts for the Southern District of Georgia, for the Middle District of Alabama, for the Northern District of Alabama, and for the Southern District of Florida, as courts of ancillary jurisdiction, in foreclosure proceedings and in proceedings instituted by general creditors' bill, and the properties of Atlanta, Birmingham and Atlantic Railway Company (hereinafter called the old company) including the properties subject to said mortgages or either of them are now in the hands of a receiver appointed by said United States District Court for said Northern District of Georgia and in said other District Courts. Said United States District Court for the Northern District of Georgia is hereinafter called the court.

Foreclosure proceedings are also pending in the court and in said other District Courts in respect of the foreclosure of a certain mortgage securing first and refunding mortgage bonds of the Old Company. It is, however, expected that the holders of said bonds can be settled with in cash on the basis of the principal and interest of the debts for which they held or hold said bonds as collateral,

so that it will not be necessary to proceed further with the foreclosure proceedings in respect of said bonds or to provide for said bonds in the plan (hereinafter referred to and herein called the plan), but it is recognized that the cash requirements in the amount set forth in Exhibit A hereinafter mentioned may have to be increased so as to include provision for the payment of principal and interest of all or part of said bonds held as collateral for such debts. In the event that the New Company shall acquire said properties, said mortgage securing said bonds is to be released and discharged.

It is proposed to form under the laws of Georgia, or of some other State if desirable and permissable, a new company (hereinafter called the New Company) to be called the Atlanta, Birmingham and Atlantic Railroad Corporation or by some other name to be agreed upon.

It is proposed that the New Company shall acquire said properties of the Old Company as aforesaid (including property held by the receiver) by foreclosure sale or sales, through the above-mentioned foreclosure proceedings and by sale under said general creditors' bill so that there shall be acquired by the New Company all mortgaged and unmortgaged assets of the Old Company and/or of the receiver, subject to such changes in said properties as may occur in the ordinary conduct of business and/or as may be approved by the court.

WITNESSETH:

The parties hereto, for and in consideration of the covenants and promises hereinafter recited, do hereby agree with each other as follows:

I. CAPITALIZATION OF THE NEW COMPANY

The New Company is to have a capitalization as follows:

(1) Preferred stock (authorized) $5,200,000 par value:

To have a par value of $100 per share; to be preferred as to dividends over common stock; to be entitled and limited to 5% cumulative dividends, payable semiannually accruing from one year after the date on which possession of said properties shall be vested in the New Company; such preferred stock to be entitled and limited in the event of any liquidation, dissolution or winding up, voluntary or involuntary, to $100 and accrued dividends per share before any assets shall be distributed to the common stock; to be redeemable as a whole but not in part, at the option of the New Company, at 103 and accrued dividends on any semiannual dividend payment date after January 1, 1935, upon three months' notice to each holder of record of preferred stock mailed to his address as then recorded on the books for dividend payments and upon publication of a notice of redemption once a week for four successive weeks immediately preceding the redemption date; to have no power to vote, except in case of continuing default in the payment of two semiannual dividends, in which case the preferred stock is to have exclusive voting

power so long as any default continues; dividends at the rate aforesaid and the redemption of the preferred stock as hereinafter provided to be guaranteed by the Railroad Company by unsigned endorsement upon the preferred stock certificates, which endorsement shall refer to an appropriate instrument of guaranty wherein the Railroad Company shall guarantee such dividends and shall also guarantee to redeem the preferred stock at 103 and accrued dividends in case of liquidation, dissolution or winding up, voluntary or involuntary, of the New Company, or in case of any merger or consolidation of the New Company, or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of the New Company, while any preferred stock shall be outstanding. Appropriate provision shall be made so that said guaranty in respect to the dividends on the preferred stock and the redemption thereof as herein provided shall not be subject to any change or modification through agreement between the New Company and the Railroad Company. No debt or obligation which may at any time be or become due and owing by the New Company to the Railroad Company shall be used as a set-off, counterclaim or defense to any obligation of the Railroad Company in respect of the redemption of the preferred stock and/or the payment of dividends thereon. The preferred stock shall be prepared in form for listing upon the New York Stock Exchange, and upon request of the committees the New Company will make application for such listing and shall comply with the requirements with respect thereto.

No additional preferred stock and no stock ranking on a parity with or having priority over the preferred stock shall be issued without the affirmative vote or written consent of the holders of three-fourths of the preferred stock then outstanding. This provision shall not apply to equipment trust certificates issued on the so-called "Philadelphia plan."

The New Company shall be authorized by its charter to issue in addition to the two classes of stock herein mentioned, notes and/or bonds, whether or not secured by mortgage upon the railroad properties of the New Company, including equipment and/or other assets specifically named without the assent of the preferred stock or the common stock except as may be required by law.

(2) Common stock (authorized) 150,000 shares:

To be without par value; to have sole voting power except as hereinabove otherwise provided with respect to the voting power of the preferred stock; to be entitled in case of liquidation, dissolution or winding up, voluntary or involuntary, of the New Company to remaining assets after preferred stock has received $100 per share and accrued dividends.

II. Acquisition of properties by the New Company

The committees, subject to the approval of the requisite percentages of the bonds which the committees respectively represent, upon

promulgation of the plan, agree to endeavor to cause said properties to be acquired by the New Company as herein provided, and to that end the committees, subject as aforesaid, will bid for said properties at said sale or sales an amount or amounts up to, but, unless directed by the Railroad Company, not in excess of $4,500,000 in addition to the indebtedness of the Old Company prior to the mortgages securing the bonds, equipment obligations and obligations of the receiver substantially as set forth in Exhibit A hereinafter mentioned. The Railroad Company will upon request of the committee furnish to the committees or to their nominee or nominees certified checks for any amount or amounts required to enable the committees or their nominee or nominees to qualify as bidders at said sale or sales which the court may require in addition to the deposit of bonds held by the committees or either of them, and after confirmation of such sale or sales by the court and upon the acquisition of said properties by the New Company, subject only to such of the items included in Exhibit A hereinafter mentioned as may not have been already discharged, the Railroad Company will reimburse the committees or their nominee or nominees for payments of such portion of the purchase price of said properties so sold as may have theretofore been required from time to time by the court to be paid in cash. Insofar as any amounts so furnished to the committees or to their nominee or nominees shall not be used or required as aforesaid the same shall be returned to the Railroad Company by the committees or their nominee or nominees, whoever shall have received such amounts so furnished, as the case may be, but as to any and all amounts so furnished which shall be paid as required by or pursuant to any decree or order of the court, the committees and their nominee or nominees shall be relieved from all liability or accountability to the Railroad Company, but the Railroad Company, upon full performance of all of its obligations hereunder, shall be subrogated to the rights of the committees or their nominee or nominees in respect of said payment or payments. Nothing herein shall obligate the committees to bid at such sale or sales unless the committees or their nominee or nominees shall have been furnished with the requisite funds as hereinbefore provided. If the court shall confirm a bid which shall not have been made by or on behalf of the committees, the bonds represented by the committees shall receive their distributive share of the proceeds of sale made pursuant to any such bid, and the committees shall be relieved from all liability to the Railroad Company except for the return to the Railroad Company of the amounts, if any, furnished by the Railroad Company to qualify bidders if such amounts are repaid to the committees.

The sum of $100,000 received on or about September 20, 1920, by the trustee under the mortgage securing said fifteen-year five per cent income mortgage gold bonds, together with any interest thereon, wherever the plan shall be consummated, after deducting therefrom all expenses and charges of the committee formed under said deposit

agreement not otherwise provided for, shall be distributed when and as determined by said committee in its discretion to the holders of said income bonds and neither the New Company nor the Railroad Company shall be entitled to receive any part of said sum.

III. Cash requirements for reorganization

A statement of the total cash requirements for the reorganization and the acquisition of said properties by the New Company is hereto attached as Exhibit A except that the amount stated in Exhibit A does not include cash payments which the court may require to be made under the bids for purposes not mentioned in Exhibit A.

In case the New Company shall acquire said properties the Railroad Company shall provide cash for the cash requirements specified in Exhibit A, as herein provided, and in addition thereto, the Railroad Company shall be obligated in case the New Company shall acquire said properties as herein provided to provide cash sufficient to meet the respective distributive shares in the proceeds of said sale or sales in respect of any of the bonds which shall not assent to the plan as herein provided, or to reimburse the committees for any amounts which may have theretofore been paid or provided for that purpose by the committees.

The Railroad Company shall be entitled to receive the entire issue of 150,000 shares of common stock of the New Company in exchange for the cash which the Railroad Company shall provide hereunder.

IV. Treatment of holders of the bonds and other creditors of the Old Company

1. Each holder of the bonds who shall assent to the plan shall receive in exchange for his bonds $60 par value of preferred stock of the New Company for each $100 principal amount of bonds held by him and deposited by him in accordance with the provisions of the plan.

2. Each holder of bonds who shall not assent to the plan and deposit his bonds thereunder shall receive in cash his pro rata distributive share, as fixed by the court, of the proceeds of sale of said properties. In so far as the holders of any of the bonds shall not elect, by assenting to the plan, to take preferred stock of the New Company in lieu of their respective distributive shares in the proceeds of said sale or sales, the preferred stock of the New Company which would have been issued to such bondholders had they made such election shall be issued to the Railroad Company.

3. All claims admittedly having or adjudged to have priority over any of the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company held by the United States Government (if it is necessary to pay off the same) and obligations of the receiver shall be paid in cash by the Railroad Company upon the acquisition of said properties by the New Company as aforesaid,

except that obligations of the Old Company and/or of the receiver not matured at the time of the acquisition of said properties by the New Company may be assumed by the New Company instead of being paid in cash, but the Railroad Company shall provide or cause the New Company to provide the necessary cash to pay such obligations as they mature. All of such obligations (but without interest thereon in full) are set forth in Exhibit A.

4. In case said properties shall be acquired by the New Company and the Railroad Company shall perform all its obligations hereunder the distributive shares in the proceeds of said sale or sales payable in respect of all the bonds now or hereafter deposited with the committees which shall assent to the plan shall be credited on the purchase price of said properties.

V. Receivership, reorganization, and miscellaneous expenses and allowances

All compensation and expenses of the committees and their counsel and compensation and expenses of the respective trustees under the three mortgages above referred to and of counsel for the said trustees, and compensation and expenses of the reorganization committee (hereinafter referred to) and their counsel, and allowances to and expenses of all other counsel involved in the receivership proceedings, allowances to the receiver and special masters and all other reorganization expenses and expenses of the organization of the New Company and the issue of its securities and all other expenses connected with the acquisition by the New Company of said properties (such compensation, allowances, and expenses not to exceed in the aggregate $600,000), shall be paid in cash by the Railroad Company upon the acquisition of said properties by the New Company as aforesaid.

VI. Promulgation of plan

The committees shall join in promulgating a reorganization plan (herein called the plan) for the purpose of carrying out the provisions hereof, and the committees shall exercise due diligence in endeavoring to cause said properties to be acquired by the New Company as herein provided.

VII. Reorganization committee

The committees may appoint a joint reorganization committee consisting of such members as the committees may determine, and such reorganization committee, if the committees shall so prescribe in connection with the constitution of such reorganization committee, may be substituted for the committees in respect of all or any action to be taken by the committees and in respect of the rights of the committees hereunder. Such reorganization committee and the railroad company may agree from time to time upon such changes or

modifications hereof as they may deem advisable so far as may be permitted by the plan.

VIII. Waiver of personal liability of committees

The obligations hereby created are obligations of the committees which they are authorized to assume under the agreements under which they are respectively acting, subject, however, to the provisions of said agreements with regard to dissent and withdrawal. No member of either of the committees or of the reorganization committee assumes, or shall have, any individual responsibility or liability hereunder or for the result of any steps taken or acts done or to be done pursuant hereto. Any member of either of the committees and/or of the reorganization committee and/or any firm or corporation of which such member may be a member, director, or officer may individually own or be otherwise interested in the bonds and/or any of the stocks, bonds, or other securities of the Railroad Company and/or of the New Company and/or the Old Company.

IX. Miscellaneous

This agreement shall be subject:

(1) To the deposit with the committees of at least $7,000,000 principal amount of the bonds on or before September 1, 1926.

(2) To the plan being declared operative by the committees.

(3) To the approval of the Interstate Commerce Commission and any other public authority having jurisdiction.

The Railroad Company and the committees will cooperate to the end that the approval of the Interstate Commerce Commission and other public authorities, if any, having jurisdiction in respect hereof shall be had as promptly as may be.

All legal proceedings and papers shall be subject to approval by counsel for the committees and by counsel for the Railroad Company.

This agreement shall be construed strictly as an agreement among the parties hereto and as solely affecting and relating to the committees and the Railroad Company, and no bondholder or other person, firm, or corporation other than the parties hereto shall have any right or liability hereunder.

Nothing in this agreement shall obligate the committees to provide any cash hereunder unless the same shall be furnished to the committees by the Railroad Company.

In the event that the Railroad Company shall not direct the committees to bid at any sale or sales of said properties an amount in excess of that specified in Article II hereof, the committees or their nominee or nominees may in the discretion of the committees bid any amount or amounts in excess thereof, and in that event if the committees or their nominee or nominees shall be the successful bidder or bidders at said sale or sales the Railroad Company shall have no claim or right in respect of said properties acquired at said sale or sales or against the committees or their nominee or nominees, except

for the return of such amount or amounts, if any, as may have been furnished by the Railroad Company to the committees or their nominee or nominees to qualify a bidder or bidders at said sale or sales, and the Railroad Company shall be under no further obligation hereunder.

This agreement may be executed in any number of counterparts which shall constitute but one and the same instrument.

In witness whereof each of the committees has caused these presents to be duly executed by a majority of its members and the Railroad Company has caused the same to be duly executed and sealed by its officers thereunto duly empowered, all as of the day and year first above written.

George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under said deposit agreement dated December 7, 1921, and not individually, by George E. Warren, E. P. Maynard, Joseph P. Bradshaw, Charles F. Ayer, George E. Roosevelt, a majority of said committee.

Francis R. Hart, James H. Perkins, Percy R. Pyne, 2nd, F. J. Lisman, and George Bramwell Baker, as the committee acting under said bondholders' agreement dated September 26, 1921, and not individually, by Francis R. Hart, George Bramwell Baker (by Philip Young, proxy), F. J. Lisman, James H. Perkins, Percy R. Pyne, 2nd (by J. H. Perkins, atty.), a majority of said committee.

ATLANTIC COAST LINE RAILROAD COMPANY,
By H. WALTERS, *Chairman.*

[CORPORATE SEAL.]
Attest:
H. L. BORDEN, *Secretary.*

[Exhibit A]

(The amounts stated herein are approximate estimates, and interest where included has not been brought down to date.)

1. Taxes to December 31, 1925	$375,000
2. Materials and supplies	745,000
3. Birmingham Trust & Savings Bank loan	114,000
4. National Bank of Commerce loan	351,000
5. United States Government matured notes	293,000
6. United States Government unmatured loan	100,000
7. United States Government unmatured equipment notes	655,000
8. Unmatured notes for rebuilding equipment	444,500
9. Receivership, reorganization, and miscellaneous expenses and allowances	600,000
Total	3,677,500

60 *Exhibit 6—Atlanta, Birmingham and Atlantic Railway Company—Plan and agreement of reorganization, dated February 23, 1926*

Reorganization committee: Frances R. Hart, vice chairman, Old Colony Trust Company, Boston; James H. Perkins, president, the Farmers' Loan and Trust Company, New York City; George E. Warren, vice president, the Chase National Bank of the City of New York, New York City; George E. Roosevelt, of Roosevelt & Son, New York City.

Depositaries: Irving Bank-Columbia Trust Company, 60 Broadway, New York City; Old Colony Trust Company, 17 Court Street, Boston; the Farmers' Loan and Trust Company, 22 William Street, New York City.

[Stamped:] Interstate Commerce Commission. Ex. No. 6. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Warren.

Atlanta, Birmingham and Atlantic Railway Company

PLAN OF REORGANIZATION

This plan of reorganization of Atlanta, Birmingham and Atlantic Railway Company (hereinafter called the Old Company) has been prepared and adopted by George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under the deposit agreement dated December 7, 1921, with respect to fifteen-year five per cent income mortgage gold bonds of the Old Company (hereinafter called the income bonds) and Francis R. Hart, James H. Perkins, Percy R. Pyne 2nd, George Bramwell Baker, and F. J. Lisman, as the committee acting under the bondholders' agreement dated September 26, 1921, in respect of first mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (hereinafter called the first mortgage bonds).

I. Introductory statement

This plan is based upon and promulgated pursuant to an agreement dated February 23, 1926, between said committees and Atlantic Coast Line Railroad Company (hereinafter, and in the agreement of reorganization hereto annexed, called the Railroad Company). Copies of said agreement are on file with the depositaries hereinafter mentioned, and may there be examined by any holder of income bonds or of first mortgage bonds or of certificates of deposit representing either thereof, but nothing herein contained shall be taken as a representation, express or implied, as to the provisions of said agreement. This plan and said agreement of reorganization are herein sometimes called the plan and agreement.

Due to the insufficient earnings of the properties, it has not been feasible to work out a plan for the independent reorganization of

the properties that could be financed. No proposition has been received by the committees that seemed as satisfactory as the one contained in said agreement between the committees and the Railroad Company.

$4,090,000 principal amount of first mortgage bonds are outstanding in the hands of the public.

$4,543,906.78 principal amount of income bonds (or scrip representing the same) are outstanding in the hands of the public (exclusive of $400,000 principal amount held by the United States Government as collateral for a loan made to the Old Company and $256,093.22 principal amount held in the treasury of the Old Company).

The mortgages securing the income bonds and the first mortgage bonds are in process of foreclosure, and the properties of the Old Company are in the hands of a receiver appointed in such foreclosure proceedings and in proceedings instituted by a general creditors' bill.

It is proposed that the plan be accomplished through the formation of a new company (hereinafter called the New Company) to acquire the properties of the Old Company, including property held by the receiver, by sale or sales in the above-mentioned proceedings so that the New Company shall acquire all mortgaged and unmortgaged assets of the Old Company and the receiver, subject to such changes therein as may occur in the ordinary conduct of business and/or as may be approved by the court or courts having jurisdiction in respect of said assets or any part thereof.

All claims admittedly having or adjudged to have priority over any of the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company held by the United States Government (if it is necessary to pay off the same) and obligations of the receiver are to be paid in cash by the Railroad Company upon the acquisition of said properties by the New Company, except that obligations of the Old Company and/or of the receiver which have not matured at the time of the acquisition of said properties by the New Company may be assumed by the New Company instead of being paid in cash.

No provision is made in the plan for the stock of the Old Company.

The plan and said agreement between the committees and the Railroad Company are subject to the approval of the Interstate Commerce Commission and of any other public authority having jurisdiction.

II. Capitalization of New Company

(1) Preferred stock (authorized) $5,200,000 par value:

To have a par value of $100 per share; to be preferred as to dividends over common stock; to be entitled and limited to 5% cumulative dividends, payable semiannually accruing from one year after

the date on which possession of said properties shall be vested in the New Company; such preferred stock to be entitled and limited in the event of any liquidation, dissolution or winding up, voluntary or involuntary, to $100 and accrued dividends per share before any assets shall be distributed to the common stock; to be redeemable as a whole but not in part, at the option of the New Company, at 103 and accrued dividends on any semiannual dividend payment date after January 1, 1935, upon three months' notice to each holder of record of preferred stock mailed to his address as then recorded on the books for dividend payments and upon publication of a notice of redemption once a week for four successive weeks immediately preceding the redemption date; to have no power to vote except in case of continuing default in the payment of two semiannual dividends, in which case the preferred stock is to have exclusive voting power so long as any default continues; dividends at the rate aforesaid and the redemption of the preferred stock as hereinafter provided to be guaranteed by the Railroad Company by unsigned endorsement upon the preferred stock certificates, which endorsement shall refer to an appropriate instrument of guaranty wherein the Railroad Company shall guarantee such dividends and shall also guarantee to redeem the preferred stock at 103 and accrued dividends in case of liquidation, dissolution or winding up, voluntary or involuntary, of the New Company, or in case of any merger or consolidation of the New Company, or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of the New Company, while any preferred stock shall be outstanding. Appropriate provision shall be made so that said guaranty in respect to the dividends on the preferred stock and the redemption thereof as herein provided shall not be subject to any change or modification through agreement between the New Company and the Railroad Company. No debt or obligation which may at any time be or become due and owing by the New Company to the Railroad Company shall be used as a set-off, counterclaim or defense to any obligation of the Railroad Company in respect of the redemption of the preferred stock and/or the payment of dividends thereon.

The preferred stock shall be prepared in form for listing upon the New York Stock Exchange and upon request of the reorganization committee the New Company will make application for such listing.

No additional preferred stock and no stock ranking on a parity with or having priority over the preferred stock shall be issued without the affirmative vote or written consent of the holders of three-fourths of the preferred stock then outsanding. This provision shall not apply to equipment trust certificates issued on the so-called "Philadelphia plan."

The New Company shall be authorized by its charter to issue in addition to the two classes of stock herein mentioned notes and/or

bonds whether or not secured by mortgage upon the railroad properties of the New Company, including equipment and/or other assets specifically named without the assent of the preferred stock or the common stock except as may be required by law.

(2) Common stock (authorized) 150,000 shares.

To be without par value; to have sole voting power except as hereinabove otherwise provided with respect to the voting power of the preferred stock; to be entitled in case of liquidation, dissolution, or winding up, voluntary or involuntary, of the New Company to remaining assets after preferred stock has received $100 per share and accrued dividends.

III. Cash requirements

The total cash requirements are estimated to be $3,677,500 (in addition to cash payments which the court having jurisdiction may require to be made under the bids), and provision is made in said agreement between the committees and the Railroad Company whereby the Railroad Company is to provide such cash in the amounts and upon the conditions in said agreement set forth. The Railroad Company shall be entitled to receive the entire issue of 150,000 shares without par value of common stock of the New Company in exchange for the cash which the Railroad Company shall provide.

IV. Treatment of bonds

Each holder of income bonds and each holder of first-mortgage bonds and each holder of a certificate of deposit representing any of said bonds who assents to and becomes a party to the plan shall, upon completion of the reorganization, be entitled to receive in exchange for his bonds or certificates of deposit $60 par value of preferred stock of the New Company for each $100 principal amount of said bonds (with coupons appertaining thereto as specified in Article V hereof) held by him and heretofore or hereafter deposited in accordance with the provisions of the plan and agreement.

No provision is made in the plan for any holder of income bonds or of first-mortgage bonds or of certificates of deposit representing either thereof who shall not participate in the plan as provided in the plan. Any preferred stock of the New Company which would have been issued to such boldholders had they so participated in the plan shall be issued to the Railroad Company.

V. Method of participation in plan

Holders of income bonds not heretofore deposited under said deposit agreement, who desire to assent to and become parties to the plan and agreement, must, within such period as may be fixed by the reorganization committee, deposit with Irving Bank-Columbia Trust Company, No. 60 Broadway, New York City, as depositary under

said deposit agreement, their said bonds and receive therefor appropriate certificates of deposit issued under said deposit agreement stamped as assenting to the plan and agreement and shall by acceptance thereof waive any and all right of withdrawal given by said deposit agreement. Coupon income bonds must be accompanied by coupon No. 9 and subsequent coupons.

Holders of first-mortgage bonds not heretofore deposited under said bondholders' agreement, who desire to assent to and become parties to the plan and agreement, must, within such period as may be fixed by the reorganization committee, deposit with Old Colony Trust Company, 17 Court Street, Boston, Mass., or the Farmers' Loan and Trust Company, 22 William Street, New York City, as depositary under said bondholders' agreement, their said bonds, and receive therefor appropriate certificates of deposit issued under said bondholders' agreement stamped as assenting to the plan and agreement and shall by acceptance thereof waive any and all right of withdrawal under said bondholders' agreement. Coupon first-mortgage bonds so deposited must be accompanied by the coupon due July 1, 1921, and all subsequent coupons.

Registered bonds deposited as above provided must be accompanied by such endorsements, assignments, powers of attorney, and other instruments as may be required by the reorganization committee in order to transfer title thereto.

Holders of certificates of deposit for income bonds or first-mortgage bonds, who shall not exercise within the time, in the manner and upon the terms specified in the respective agreements under which such certificates of deposit may be issued, the rights of withdrawal conferred by said agreements respectively, shall be conclusively deemed to have assented to the plan and agreement and to have deposited their bonds thereunder and shall become parties to the plan and agreement without the issue of new certificates of deposit or any stamping of said certificates. Holders of said certificates of deposit may, however, at any time, present their certificates of deposit for the purpose of having such certificates stamped as assenting to the plan and agreement.

VI. Reorganization committee

The plan and agreement are to be carried out under the supervision and direction of a reorganization committee of which the original members shall be Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins (herein called the reorganization committee).

Except as herein otherwise expressly provided, the forms and terms of all agreements, instruments, and papers, and all preceedings for carrying out the plan and agreement shall be such as the reorganization committee may direct or approve. The reorganization committee shall have the power to determine when the holders of bonds of a sufficient principal amount shall have assented to the plan and agreement to make it advisable to declare the plan operative.

The reorganization committee is substituted for the committees, in respect of all or any action to be taken by the committees and in respect of the rights of the committees, under said agreement between the committees and the Railroad Company. The plan and agreement are expressly made subject to the provisions of said agreement between the committees and the Railroad Company, and in case of any inconsistency between said last mentioned agreement and the plan and agreement the provisions of said last-mentioned agreement shall govern in so far as the reorganization committee in its discretion shall deem advisable. The reorganization committee may change or modify said agreement between the committees and the Railroad Company, and no such change or modification shall be deemed a change or modification of the plan and agreement unless the same shall materially adversely affect the holders of bonds who shall have assented to the plan and agreement, in which event such change or modification shall be subject to the provisions of article seventh of said agreement of reorganization.

For a further statement of the powers of the reorganization committee, reference is made to said agreement of reorganization. In case of any conflict or inconsistency between the plan and agreement, the latter shall govern.

Atlanta, Birmingham and Atlantic Railway Company

AGREEMENT OF REORGANIZATION

AGREEMENT made as of the 23rd day of February, 1926, between Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins, as the reorganization committee constituted by the foregoing plan and this agreement (hereinafter called the reorganization committee), parties of the first part;

George B. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under the deposit agreement dated December 7, 1921, with respect to fifteen-year five per cent income mortgage gold bonds of Atlanta, Birmingham and Atlantic Railway Company (hereinafter called the Old Company), and Francis R. Hart, James H. Perkins, Percy R. Pyne 2nd, George Bramwell Baker, and F. J. Lisman, as the committee acting under the bondholders' agreement dated September 26, 1921, with respect to first mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (said committees being hereinafter called the committees and said bonds of both issues being hereinafter called the bonds), parties of the second part; and

Holders of the bonds and/or of certificates of deposit for any of the bonds who shall become parties hereto in the manner herein and in the plan provided, their transferees, successors and assigns (hereinafter called assenting bondholders), parties of the third part;

WITNESSETH:

The parties hereto, for and in consideration of the covenants and promises hereinafter recited, and for the purpose of consummating

the foregoing plan for the reorganization of the Old Company, or some modified or substituted plan as hereinafter provided for, have mutually agreed and hereby do severally agree with each other as follows:

First. The foregoing plan (hereinafter called the plan) is hereby adopted and approved, and shall be taken to be a part of this agreement with the same effect as though each and every statement and provision thereof had been repeated and embodied herein, and the plan and this agreement shall constitute and be read as parts of one and the same instrument; but no estimate, statement, explanation or suggestion contained in the plan or this agreement, or in a certain agreement between the Railroad Company and the committees referred to in the plan, or in any letter or circular issued or which may hereafter be issued by or on behalf of the reorganization committee or the committees, or either of them, is intended or is to be taken as a representation or warranty, or as an inducement or a condition of assent under or to the plan or this agreement, and no defect, error or omission therein shall release any party hereto except by written consent of the reorganization committee.

Second. The reorganization committee may act by a majority of its members either at a meeting or in writing without a meeting. Any member of the reorganization committee may vote or act by proxy (who may be another member of such committee) and the vote or act of such proxy shall be as effective as the vote or act of the member appointing such proxy. In case of the resignation, death, or inability to act of George E. Warren or George E. Roosevelt or any successor of either of them, the committee acting under said deposit agreement dated December 7, 1921, may appoint a successor; and in case of the resignation, death or inability to act of Francis R. Hart or James H. Perkins or any successor of either of them, the committee acting under said bondholders' agreement dated September 26, 1921, may appoint a successor; and any person so appointed shall have all the powers conferred hereby upon a member of the reorganization committee to the same extent and in all respects as if he were herein named as a member of the reorganization committee. All the powers conferred by the plan or this agreement upon the reorganization committee shall be exercised by the persons who for the time being constitute the reorganization committee. The reorganization committee may, from time to time, add to its number by electing an additional member or members and the member or members so elected and any successor to any such member (who shall be appointed by a majority of the remaining members of the reorganization committee) shall have all the powers of and, together with those herein named or their respective successors, shall constitute the reorganization committee under the plan and this agreement with like force and effect as if he or they were specifically herein named as parties of the first part.

Third. Holders of the bonds and of certificates of deposit representing any of the bonds may assent to and become parties to the

plan and this agreement in the manner provided in the plan, or in any other manner which may be prescribed or approved from time to time by the reorganization committee.

The bonds and appurtenant coupons represented by certificates of deposit issued respectively under said deposit agreement dated December 7, 1921, and said bondholders' agreement dated September 26, 1921, the holders of which shall not have withdrawn as in said agreements respectively provided, and the bonds and appurtenant coupons hereafter deposited as provided in the plan and this agreement, shall be or continue to be held by the respective depositaries under said agreements but shall be subject, nevertheless, to all of the terms and provisions of the plan and this agreement. The reorganization committee at any time in its discretion may take title to any or all of the bonds so held and any other securities or property held by the respective committees acting under said agreement, respectively, by filing with the committee holding the bonds, securities or other property title to which is to be taken and with the depositary with which such bonds, securities or other property shall be deposited a copy of a resolution of the reorganization committee certified by its secretary stating that the reorganization committee has determined to take title to the bonds, securities and other property specified in such resolution, and immediately upon such filing the reorganization committee shall be vested with the legal title to and all the rights and powers and authority of an absolute owner of all such bonds, coupons, securities, and other property.

The depositaries may upon the request of the reorganization committee appoint agents or other depositaries to accept deposits of the bonds in their behalf, and under their direction to assist in the performance of any other duties imposed upon them as depositaries either by this agreement or by the reorganization committee.

Fourth. All holders of the bonds and of certificates of deposit representing any of the bonds, who shall become parties to the plan and this agreement, their successors and assigns, shall be entitled only to the rights specified in the plan and this agreement or granted by the reorganization committee pursuant to the powers conferred upon it, and shall be subject to such conditions and terms as may be imposed thereunder, and certificates of deposit representing their bonds shall be transferable only subject to the plan and this agreement.

The reorganization committee in its discretion may fix or limit the periods within which deposits may be made under the plan and within which any holder of any of the bonds may assent to and become a party to the plan and this agreement, and may exercise any right given by the plan or this agreement, and the reorganization committee, either generally or in special instances, and upon such terms and conditions as it may see fit, may extend any period or periods so fixed. Holders of the bonds not assenting to and becoming parties to the plan and this agreement within the period or periods respectively so fixed or limited shall not be entitled so to assent to the plan and become parties to this agreement or to share in any

benefits of the plan and this agreement and shall acquire no rights thereunder except upon obtaining the express written consent of the reorganization committee, which may withhold or give such consent in its discretion and upon such terms and conditions as it may determine, and assenting bondholders who shall fail to exercise any right or option given by the plan or this agreement within the period or periods so fixed or limited for the exercise therof, shall forfeit such right or option, unless expressly excused by the reorganization committee in writing, which may refuse or grant such excuse in its discretion and upon such terms and conditions as it may determine.

Fifth. The assenting bondholders severally expressly assent to the plan and this agreement and request the reorganization committee to endeavor to carry out the plan and this agreement in their entirety or to such an extent or in such manner and with such conditions, exceptions, substitutions, and modifications thereof as the reorganization committee shall deem for the best interests of the parties hereto or likely to accomplish in substance the results contemplated by the plan and this agreement. Each assenting bondholder hereby grants to and vests in the reorganization committee full power and authority to do any and all acts and things which the reorganization committee may deem necessary or appropriate for the purpose of carrying out the plan and this agreement or otherwise for his best interest; and, without limitation of the effect of the foregoing general authority, hereby grants to the reorganization committee full power and authority, in his name or in the name of the reorganization committee or otherwise as the reorganization committee may determine, to request or direct any trustee under any mortgage securing the bonds or any of them to prosecute foreclosure or take other proceedings for the enforcement thereof, or otherwise, and to exercise any powers and rights conferred by any such mortgage; to confirm and give to any such trustee all such powers as in the judgment of the reorganization committee may be advantageous, and to make all such other requests or directions upon any such trustee or otherwise as the reorganization committee may deem expedient; to execute such papers and do or cause to be done such acts as the reorganization committee may consider judicious in protecting the rights and interests of the assenting bondholders; to call or waive notice of and to attend any and all meetings of bondholders, stockholders or creditors, however, whenever, and for whatever purpose convened, and thereat, or otherwise, to vote and consent in writing or otherwise to take such action as the reorganization committee may deem expedient; to do whatever may be deemed by the reorganization committee advisable to permit or procure the sale as an entirety, or the separate sales, of the properties and business of the Old Company and/or of the receiver thereof, or such part or parts thereof as the reorganization committee in its discretion may determine, to such corporation organized or to be organized under the laws of such State or States as the reorganization committee may determine (such corporation being in the plan and

this agreement sometimes called the New Company) and for such consideration, whether in stocks or securities or otherwise, as the reorganization committee may determine; to qualify, or to cause a nominee or nominees to qualify, to bid at such sale or sales, and for that purpose to use or authorize the use of any of the bonds and/or any cash or other property and to permit any of the bonds, cash and/or other property so used to be forfeited in case the reorganization committee shall for any reason be unable or deem it inadvisable to complete the purchase of said properties; to acquire and/or to dispose of, on such terms as it may see fit any lines of railroad or other property of any kind or nature whatsoever in the judgment of the reorganization committee advantageous to the New Company or for any of the purposes of the plan and this agreement; to enter into and from time to time change or modify any agreement or agreements with the Railroad Company, the New Company, or any other corporation, or approve and adopt any agreement or agreements with the Railroad Company, the New Company or any other corporations; to cause the New Company to enter into such agreement or agreements with the Railroad Company as the reorganization committee shall in its discretion deem advisable, and the terms and provisions of any such agreement or agreements, including, without limitation of the generality of the foregoing, the terms and provisions of the agreement between the Railroad Company and the New Company and any other party or parties in respect of the guaranty by the Railroad Company of the dividends on the preferred stock of the New Company and the redemption thereof, shall be such as may be approved by the reorganization committee; to take, join in or consent to such proceedings before the Interstate Commerce Commission and any other public service commission or other public authority as the reorganization committee may deem expedient; to cause the New Company or any corporation used to carry out the plan to create and issue the stocks contemplated by the plan, and to exercise or cause to be exercised all the corporate powers of such corporation until the securities to be issued by such corporation under the plan have been delivered to the persons entitled thereto under the plan; to transfer the bonds or any part of the bonds and/or any other property or rights to such other corporation in exchange in whole or in part for its stock, and/or to use said bonds in whole or in part payment of the purchase price of said properties or for any other purpose in connection with the plan and this agreement; to declare due the principal of the bonds or any of them and to revoke any such declarations; to institute or become parties to or exercise any control over or consent to any proceedings, legal or otherwise, whether by or against the Old Company or any other corporation or persons, or involving any property of the Old Company or its receiver, and to prosecute, defend, compromise or settle the same and to consent to or enter into any and all arrangements tending toward or deemed by the reorganization committee in its discretion likely to facilitate the consummation of the plan and

this agreement; to receive and dispose of in accordance with the plan and this agreement the stocks issued for the purpose of carrying out the plan and to cause the stock certificates representing the preferred stock of the New Company to be indorsed, as provided in the plan, in respect of the guaranty by the Railroad Company of the dividends on the preferred stock and the redemption thereof; and to have all voting powers upon all such stocks for any purpose in the judgment of the reorganization committee necessary or advisable until delivered to the persons entitled thereto under the plan or to whoever shall be entitled to receive the same.

Nothing in the plan or this agreement shall obligate the reorganization committee to bid for or to acquire said properties for the New Company, or to cause said properties to be acquired by the New Company, except at a price or prices which shall seem advisable to the reorganization committee in its discretion, and in the event that said properties shall not be acquired by the New Company but shall be otherwise disposed of, the reorganization committee is authorized to collect in respect of the bonds subject to the plan and this agreement any and all amounts payable thereon out of the proceeds of the sale or sales of said properties and, after deducting the expenses and compensation of the committees, the reorganization committee and the depositaries and their respective counsel, agents and employees, and any other expenses and compensation approved by the reorganization committee, to distribute the balance of said proceeds of sale or sales pro rata to assenting bondholders.

The reorganization committee is by the plan and this agreement substituted for the committees in respect of all or any action to be taken by, and all or any rights of, the committees under said agreement between the Railroad Company and the committees and also under the respective agreements under which the committees are acting; but the committees will take any and all action requested by the reorganization committee.

In the event that for any reason the Railroad Company shall not perform its obligations under said agreement between the Railroad Company and the committees, or in the event that the Interstate Commerce Commission or other public authorities having jurisdiction, if any, shall fail to approve the carrying out of the plan and this agreement, the reorganization committee is nevertheless authorized in its sole discretion to bid for and to purchase said properties at any sale or sales thereof, and the amount of any such bid or bids whether or not made pursuant to said agreement between the Railroad Company and the committees, shall be such as may be approved by the reorganization committee in its sole discretion.

The reorganization committee is authorized by the assenting bondholders to sign and execute any proofs of claim or other instruments necessary to prove the claims of the holders of the bonds in any proceedings, and to vote on such claims at any meeting for any other purpose, with full power of substitution. The reorganization

committee is likewise authorized to consent to the vacating of any order appointing a receiver of the Old Company or any of its property and to consent to the discharge of any such receiver, or to the vacating of any other order or proceeding. All the powers and authority of the reorganization committee shall remain unmodified and undiminished by or during or after any sale or sales, and any receivership or any other legal or equitable proceedings relating to or involving the Old Company or all or any of its property.

The reorganization committee is authorized by the assenting bondholders to make such provision, if any, as in its sole discretion it may deem equitable, for lost, stolen or mutilated bonds or coupons and may provide for the issue of fractional scrip representing fractional interests in the new securities.

The reorganization committee is authorized by the assenting bondholders to determine, without limitation or restriction, the manner in which the purposes of the plan and this agreement shall be carried out. The purposes of the plan and this agreement may be deemed, at the election of the reorganization committee, to have been accomplished if the reorganization committee shall be in a position to make distribution of the stocks contemplated by the plan issued by the New Company which shall own substantially said properties of the Old Company whether or not all the obligations which may be assumed by the New Company shall have been fully discharged.

The sum of $100,000 received on or about September 20, 1920, by the trustee under the mortgage securing the income bonds, together with any interest thereon, whenever the plan shall be consummated, after deducting therefrom all expenses and charges of the committee formed under said deposit agreement in respect of the income bonds not otherwise provided for, shall be distributed when and as determined by said committee in its discretion to the holders of the income bonds, whether or not such holders shall have assented to the plan and this agreement, and neither the new company nor the Railroad Company nor the holders of first mortgage bonds shall be entitled to receive any part of said sum.

Sixth. Each assenting bondholder, for himself and for each and every of his successors in interest in respect of any and all bonds held by him or represented by his certificate of deposit, agrees at any time and from time to time on demand of the reorganization committee to execute all such further transfers and assignments and all other instruments as may be required for further evidence of the vesting in the reorganization committing or its nominees, ownership of, and all powers of ownership (including any power to vote and consent) in respect thereof, and agrees to deposit all such transfers and assignments and other instruments with any of the depositaries in the manner and at the time the reorganization committee may designate. The reorganization committee may in its discretion sell, assign, release, or otherwise use or dispose of any and all of the bonds represented by it, in any manner deemed by it appropriate to carry

out or to endeavor to carry out the purposes of the plan and this agreement.

In case any assenting bondholder shall at any time fail to execute any instrument or make any delivery or deposit on demand of the reorganization committee within such period of time as the reorganization committee may prescribe, he shall, at the election of the reorganization committee, forfeit all rights and cease to be entitled to any benefits under the plan and this agreement.

Seventh. The reorganization committee may construe the plan and this agreement and said agreement between the Railroad Company and the committees, and its construction thereof or action thereunder in good faith shall be final and conclusive. It may supply any defect or omission and reconcile any inconsistency in such manner and to such extent as shall be deemed by it necessary to carry out the plan and this agreement properly and effectively, and it shall be the sole and final judge of such necessity. The reorganization committee shall be the sole and final judge as to when and whether the assent of the holders of a sufficient principal amount of the bonds shall have been obtained to warrant the reorganization committee in declaring the plan operative, and shall have the power to declare the plan operative at such time; and it shall have power whenever it shall deem proper, at any time before the new securities shall have been issued and delivered pursuant to the plan, and whether or not the plan shall have been declared operative, to alter, modify, depart from, or abandon the plan or any part thereof. It may at any time or times, after any such partial abandonment, restore to the plan any abandoned part or parts thereof, and may seek to carry the same into effect as if such part or parts had not been abandoned. It may also attempt to carry the plan into effect rather than to abandon the same or may submit a modified plan as hereinafter provided, even though it be clear that, as carried out, the plan must depart from the original plan or from some part thereof. Any change or modification made by the reorganization committee shall thereupon become part of the plan and this agreement; and all provisions concerning the present plan shall apply to the plan as so changed and modified and the term "Plan" wherever used in the plan or this agreement includes any changed or modified plan adopted as herein provided. In case of any change or modification of the plan or of said agreement between the Railroad Company and the committees materially adversely affecting assenting bondholders, the reorganization committee shall file a statement of such proposed change or modification with the depositaries and give notice, as hereinafter provided in article thirteenth, of the fact of such filing, and thereafter at any time within two weeks after final publication of such notice any assenting bondholder may withdraw his assent and his bonds, or the proceeds thereof or substitutes therefor theretofore transferred or assigned to and then under the control of the reorganization committee, upon surrender in transferable form of his certificate of deposit to the depositary issuing the same, and at the election of the reorganiza-

tion committee, upon the payment of such amount as the reorganization committee shall in its discretion fix as a fair contribution towards the obligations, compensation, and expenses of the reorganization committee and of the committees. Every assenting bondholder who shall not within two weeks after final publication or the giving of said notice surrender, withdraw, and make payment as aforesaid, shall be deemed to have assented to the proposed change or modification, and whether or not otherwise objecting, shall be bound thereby as fully and effectively as if he had actually assented thereto. The reorganization committee shall have the sole and exclusive right to determine whether any change or modification of the plan or of said agreement between the Railroad Company and the committees materially adversely affects assenting bondholders, and the determination of the reorganization committee shall be final and conclusive on all parties hereto. In case the reorganization committee shall finally abandon the entire plan, whether or not the plan shall have been declared operative, as it may do in its uncontrolled discretion, the reorganization committee shall deliver to each of the committees securities of the character and in the amount represented by all of the certificates of deposit then outstanding under said agreements constituting such committees, respectively, or the proceeds of or substitutes for such securities then under the control of the reorganization committee, and the proportionate part as determined by the reorganization committee of any other securities or property acquired by the reorganization committee and not previously or simultaneously sold, contracted to be sold, or otherwise disposed of, or, as the reorganization committee in its discretion may determine, certificates of interest representing their pro rata share, as fixed by the reorganization committee in its sole discretion, of any such securities or property, and in the ultimate proceeds of any liquidation or other dealing therewith, upon the payment by such committee to the reorganization committee of any taxes upon such transfer and delivery and such sum as the reorganization committee in sole discretion shall fix as a fair contribution toward the obligations, compensation and expenses of the reorganization committee; and thereafter the rights of the holders of such certificates of deposit shall be only such as are conferred by said agreements respectively under which such certificates of deposit may be issued, unaffected by the plan and this agreement or any action taken pursuant hereto.

No party hereto shall be entitled to withdraw from the plan and this agreement or to receive bonds transferred or assigned to the reorganization committee, except as provided in this article, and then only within the time and subject to the conditions and limitations in this article provided.

Eighth. The reorganization committee may proceed under the plan and this agreement or any part thereof in such manner as it shall deem advisable. Anything which anywhere in the plan or this agreement the reorganization committee is authorized to do or allow to be done it may do or allow to be done by or through such

agents or agencies as it may determine, or by or through others, with its approval, consent, or acquiescence, or by contracting therefor with any person, firm, or corporation. Any action contemplated in the plan or this agreement to be performed on or after the completion of the reorganization may be taken by the reorganization committee at any time when it shall deem the plan sufficiently advanced to justify such course, whether before or after any sale or before or after the plan has been declared operative, and the reorganization committee, as it may deem necessary, may defer the performance of any provisions of the plan and this agreement and may commit such performance to the New Company. It may also in its uncontrolled discretion set apart and hold in trust, or place in trust all or any part of the securities to be issued, and any cash received from sales of new securities or otherwise, as it may deem judicious for the purpose of securing the application thereof for any of the purposes of the plan and this agreement or for the uses of the New Company, and in its discretion, may issue to the assenting bondholders certificates of interest in lieu of the new securities which would otherwise be issued. The reorganization committee may also, in its discretion, purchase obligations or claims against, or other securities of, the Old Company and hold the same subject to the plan and this agreement, or it may pay, compromise, or discharge any such obligation, claim, or securities and may provide for the purchase price thereof or funds therefor by the sale of the bonds or other securities of or claims against the Old Company or stock in or other securities of or other obligations of the New Company or in any other manner approved by the reorganization committee.

Ninth. The reorganization committee shall have the sole control, direction, and management of the plan, including any new or modified plan of reorganization. The reorganization committee undertakes to endeavor to execute the plan, but neither the reorganization committee nor any member thereof nor the depositaries nor the committees nor any member of either of the committees assume any individual responsibility either for the execution of the plan or of this agreement or of said agreement between the railroad company and the committees, or any part thereof or for the result of any steps taken or acts done for the purpose thereof. Neither the depositaries nor the reorganization committee nor the committees nor any member of either of the committees assume any responsibility or liability as to the genuineness, validity, or regularity of any of the bonds deposited hereunder or subject hereto. Neither the depositaries nor the reorganization committee nor any member thereof nor the committees nor any member of either of the committees shall be liable for any action taken in good faith in the belief that any of such bonds or any other documents or signatures are genuine. Nor shall the reorganization committee or any member thereof nor the depositaries nor the committees nor any member of either of the committees be individually liable for any act or omission of any

agent or employee selected in good faith, nor for any error of judgment or mistake in fact or law, nor in any case except for his or its own individual wilful malfeasance or wilful neglect; nor shall the reorganization committee or any member thereof nor the depositaries nor the committees nor any member of either of the committees be liable for the acts or defaults of each other. The reorganization committee shall not be liable for any depreciation in the value of any bonds or other securities of property transferred to or acquired by it. It is the purpose and intent of this agreement that any loss or liability whatsoever of the depositaries or of the reorganization committee and the members thereof and of the committees and the members of each of the committees caused otherwise than by wilful malfeasance or bad faith shall be conclusively deemed to be part of the expenses of the reorganization or of the reorganization committee as hereinafter provided for.

Nor shall the reorganization committee or any member thereof nor the committees nor any member of either of the committees be in any way responsible or liable in respect of the performance by the Railroad Company of any obligation or obligations to be performed by it under said agreement between the Railroad Company and the committees, nor for any action taken by the reorganization committee and/or the committees pursuant to the provisions of said last-mentioned agreement, provided only that the same shall be taken in the endeavor in good faith to preserve or enforce the rights and/or carry out the obligations of the committees and/or the reorganization committee under said last-mentioned agreement.

The depositaries shall incur no liability for anything done or permitted to be done at the request and direction of the reorganization committee or of any officer thereof; the deposited bonds being intended and agreed to be held at the order and under the control of the reorganization committee. The depositaries shall be bound only to exercise reasonable care in the safe-keeping of the deposited bonds and other securities and property which may be deposited with or held by them hereunder and to deal therewith in accordance with the directions of the reorganization committee. The direction of the reorganization committee shall be a complete justification for any action or omission to act on the part of the depositaries. Any depositary may resign upon ten days' notice in writing to the reorganization committee and the reorganization committee shall have power to remove any depositary and from time to time to fill any vacancy however arising in the office of any depositary. In the event of such resignation or removal the depositaries shall, upon receiving due and proper receipt and acquittance, deliver all cash, securities, property, and records held by it to the new depositary.

The reorganization committee may employ counsel, agents, depositaries, and all proper assistants, and may incur and discharge or assume any and all expenses by it deemed reasonable for the purposes of the plan and this agreement.

The reorganization committee may from time to time borrow or otherwise obtain money for any of the purposes of the plan upon such terms and conditions as it may deem proper and may execute any promissory notes and other instruments, and for the performance of such notes and other instruments and any contract at any time made by the reorganization committee or by the committees or either of them or the repayment of any moneys so borrowed with interest or the performance of any other obligation incurred hereunder, the reorganization committee may charge or pledge the bonds represented by it, or the new securities, or any other property at any time purchased or otherwise acquired hereunder, but no member of the reorganization committee or of either of the committees shall have any personal or individual liability in respect of any such contract, moneys so borrowed, or obligations.

All compensation and expenses in connection with the plan shall be determined and apportioned by the reorganization committee. The reorganization committee, for any disbursements or expenditures made or liability incurred by or in respect of the reorganization or the carrying out of the plan or the attempt to carry out the plan, and for its compensation and the compensation of such persons, firms, or corporations as it may see fit to employ, shall have a lien upon all bonds, securities, claims, obligations, or stocks transferred and assigned or to be transferred and assigned to it, and upon all property and securities acquired in the course of the reorganization, and, until their delivery or distribution, upon the new securities contemplated by the plan. So far as deemed by the reorganization committee practicable the compensation of and any expenses authorized or incurred by it hereunder, including any taxes on the issue and transfer of new stocks and other securities, may be paid as part of the reorganization expenses by the New Company or by the Railroad Company or otherwise, and the reorganization committee may make provisions satisfactory to itself therefor, but except as so paid, it may charge the assenting bondholders for its compensation and expenses and may deduct such charge from any amounts or securities becoming payable to or transferable to the assenting bondholders and for payment thereof shall have a lien upon the bonds and upon any and all moneys and new securities issued in lieu or in payment thereof. The reorganization committee may utilize or cause to be utilized all or any part of the payment of $600,000, or any lesser amount, to be made to the committees or the reorganization committee under said agreement between the Railroad Company and the committees, in such manner and for such purposes as the reorganization committee may deem proper, and without limiting the generality of the foregoing, to pay and discharge the compensation and disbursements of the trustees under the respective mortgages securing the bonds and their respective counsel, and to pay and discharge the claims for compensation and allowance of the receiver and counsel for the receiver and any and all costs and allowances

which may be imposed or become payable in respect of said receivership, and the compensation and allowances of counsel, masters and agents, and also compensation and expenses of the depositaries under said deposit agreement and under said bondholders' agreement and to compensate the members of the committees and members of the reorganization committee and the respective counsel of the committees and the reorganization committee, and the amount of any and all such payments, allowances, and compensation shall be such as may be approved by the reorganization committee, including the compensation of members of the reorganization committee as such and as members of either of the committees.

The reorganization committee upon making or providing for the payment or deliveries to the assenting bondholders in accordance with the plan and this agreement shall be under no further liability or responsibility of any character and thereupon the reorganization committee shall be discharged. The acceptance of new stock or securities shall prevent the acceptor thereof from questioning the conformity of such stock or security in any particular to any of the provisions of the plan, and the acceptance of new stock or securities by seventy-five per cent in amount of the assenting bondholders shall bind all assenting bondholders and constitute full ratification of all acts and proceedings of the reorganization committee, the committees, and the depositaries.

Any member of the reorganization committee and any member of either of the committees and any firm or corporation of which he may be a member, director, or officer and the depositaries, or any of them, or their respective directors, officers, or agents, may become assenting bondholders hereunder, and shall be entitled to the same benefits as any other assenting bondholder. They or any of them, without accountability in respect thereof, may purchase or be or become pecuniarily interested in, or in the purchase of, any bonds, debentures, stocks, contracts, or matters which the plan or this agreement concerns or to which it relates, and may contract with, deal with, advance or loan moneys to the reorganization committee, to the respective committees and/or to the New Company, for the purposes of the plan or in connection with the carrying out of the plan or otherwise. They may become officers, directors, or stockholders of the New Company or of any corporation or corporations in any way affected by the plan and this agreement.

Tenth. The enumeration of specific powers hereby conferred shall not be construed to limit or restrict general powers herein conferred or intended so to be. It is hereby distinctly declared that it is intended to confer on the reorganization committee in respect of all bonds of assenting bondholders, whether or not transferred or assigned to the reorganization committee, and in all other respects, any and all powers which the reorganization committee may deem necessary or expedient in or towards carrying out or promoting the

purposes of the plan and this agreement in any respect as now existing or as the same may be modified or amended, even though any such power be apparently of a character not now contemplated. And the reorganization committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any cause or reason it may deem expedient. All powers and authority by the plan or this agreement conferred upon the reorganization committee are hereby declared to be irrevocable and coupled with an interest.

The invalidity of one or more phrases, sentences, clauses, or paragraphs contained in this agreement or in the plan or in said agreement between the Railroad Company and the committees shall not affect the remaining portion of this agreement or of the plan or of said agreement or any part thereof, all of the phrases, sentences, clauses, or paragraphs of this agreement and of the plan and of said agreement being inserted conditionally on their being held valid and lawful, and in the event that any one or more of the phrases, sentences, clauses, or paragraphs contained in this agreement or the plan or in said agreement between the Railroad Company and the committees should be invalid, this agreement and the plan and said agreement between the Railroad Company and the committees shall be construed as if such invalid phrases, sentences, clauses, or paragraphs had not been inserted.

Eleventh. The reorganization committee may in its absolute discretion decline to receive and accept the deposit of any particular bonds or the assent of any particular bondholder. Likewise the reorganization committee may in its absolute discretion at any time decline further to represent any particular bonds which it has theretofore represented while continuing to represent the remaining bonds, in which event the reorganization committee shall publish in the manner prescribed in article thirteenth hereof a notice specifying the bonds which the reorganization committee declines further to represent and giving the holders thereof an opportunity of withdrawing them on the terms named in article seven hereof and at the expiration of fifteen (15) days from the first publication of such notice, such holders shall cease to be parties to the plan and this agreement and the reorganization committee shall cease to be under any responsibility to represent the bonds so specified in such notice.

Twelfth. Any bonds deposited hereunder or subjected hereto and any bonds acquired under the plan and this agreement shall remain in full force and effect for all purposes, and shall not, unless the reorganization committee shall otherwise direct, be deemed merged, satisfied, released, or discharged by any delivery of new securities. Any purchase or purchases by or on behalf of the reorganization committee shall vest the property purchased in the reorganization committee free from all interest or claims on the part of any bondholders or other parties.

This agreement shall be construed strictly as among the parties only and as solely affecting and relating to them, and no other person, firm, or corporation shall have any right hereunder. The plan and this agreement shall bind and benefit the several parties and their and each of their surviving heirs, executors, administrators, successors, and assigns.

Thirteenth. All calls or notices required to be given hereunder shall be inserted for publication in one daily newspaper of general circulation in the city of New York and in one daily newspaper of general circulation in the city of Boston, once in each week for two successive weeks beginning on any day of the week. Any call or notice whatsoever when so published by the reorganization committee shall be taken and considered as though personally served upon all parties hereto, as of the day of the final insertion thereof, and such publication shall be the only notice required to be given under any provision of the plan and this agreement. When a call or notice shall have been advertised as above specified, publication shall be complete as regards all parties hereto and no further publication or notice shall be required.

Fourteenth. The period of five years from the date hereof is specified as the period within which the assenting bondholders shall be entitled to the return of the bonds which they have deposited hereunder or the receipt of new securities on reorganization.

Within six months after the termination of this agreement the reorganization committee may file a statement of its transactions and accounts with the depositaries. It shall thereupon give notice of the filing thereof by publication once a week for two successive calendar weeks in one daily newspaper of general circulation in the Borough of Manhattan, city of New York, and in one daily newspaper of general circulation in the city of Boston. Unless legal proceedings impeaching the correctness of such accounts or calling in question such transactions shall be duly commenced within sixty days after the first publication of such notice, said accounts and statements as against all parties interested therein shall be conclusively presumed to be in all respects correct, and the reorganization committee and the committees and the depositaries shall be released and discharged from all liability and accountability of any kind and description arising out of the plan and agreement or any modified or substituted plan, or any action taken by the reorganization committee, excepting only such liabilities to holders of outstanding certificates of deposit or otherwise as are expressly admitted in said statements.

This agreement may be executed in any number of counterparts which shall constitute but one and the same instrument.

In witness whereof this agreement or a counterpart thereof has been signed by the members of the reorganization committee and of the committees herein referred to, or by a majority of each thereof,

as of the day and year first above written, and the assenting bondholders have become parties hereto in the manner herein provided.

George E. Warren, Francis R. Hart, George E. Roosevelt, and James H. Perkins, as the reorganization committee constituted by the foregoing plan and agreement, and not individually, by G. E. Warren, Francis R. Hart, James H. Perkins, George E. Roosevelt, a majority of said committee.

George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under said deposit agreement dated December 7, 1921, and not individually, by G. E. Warren, Joseph P. Bradshaw, E. P. Maynard, C. F. Ayer, George E. Roosevelt, a majority of said committee.

Francis R. Hart, James H. Perkins, Percy R. Pyne, 2nd, George Bramwell Baker, and F. J. Lisman, as the committee acting under said bondholders' agreement dated September 26, 1921, and not individually, by Francis R. Hart, James H. Perkins, Percy R. Pyne, 2nd (by J. H. Perkins, atty.), F. J. Lisman, a majority of said committee.

61 *Exhibit 12—Atlanta, Birmingham & Atlantic Railway Company—Reorganization committee*

[Stamped:] Interstate Commerce Commission. Ex. No. 12. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Warren.

Attached hereto is a copy of a proposed application to the Interstate Commerce Commission to be made by the reorganization committee constituted by the plan and agreement of reorganization, dated February 23, 1926, of Atlanta, Birmingham & Atlantic Railway Company.

Said reorganization committee hereby authorizes the signing, verification, and filing by George E. Warren or by any other member of said reorganization committee, of an application substantially in the attached form with any changes, omissions, or additions approved by counsel.

Dated April 7, 1926.

FRANCIS R. HART,
GEORGE E. WARREN,
J. H. PERKINS,
W. EMLEN ROOSEVELT,
as proxy for George Emlin Roosevelt,
As the aforesaid reorganization committee.

(Proof No. 4—April 6, 1926.)

Before the Interstate Commerce Commission

In the matter of the application on behalf of Atlanta, Birmingham and Coast Railroad Company for a certificate of public convenience and necessity, pursuant to subdivision (18) of section 1, and for authority to issue stocks pursuant to subdivision (2) of section 20a, of the interstate commerce act and other applicable provisions thereof

To the honorable Interstate Commerce Commission:

Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins, as the reorganization committee constituted by the plan and agreement of reorganization dated February 23, 1926, of Atlanta, Birmingham & Atlantic Railway Company and not individually, hereby apply on behalf of Atlanta, Birmingham and Coast Railroad Company (hereinafter called the applicant) for a certificate of public convenience and necessity, pursuant to subdivision (18) of section 1, and for authority to issue stocks pursuant to subdivision (2) of section 20a, of the interstate commerce act and other applicable provisions thereof, and respectfully state as follows:

First. The exact corporate name of the applicant is to be Atlanta, Birmingham and Coast Railroad Company, or such other name as the reorganization committee may, with the approval of the commission, determine.

It is requested that communications in respect of this application be addressed to Cotton & Franklin, of counsel for the reorganization committee, 43 Exchange Place, New York City.

Second. The applicant is to be organized under the laws of the State of Georgia or of such other State as the reorganization committee may, with the approval of the commission, determine, for the purpose, among other things, of acquiring and operating the lines of railroad and other properties of the Atlanta, Birmingham & Atlantic Railway Company (hereinafter called the Old Company) and its receiver, pursuant to said plan and agreement of reorganization dated February 23, 1926, for the reorganization of the Old Company. Said plan and agreement (hereinafter called the plan) will be presented at the hearing of the application.

A sale of said lines of railroad and other properties is to be held, pursuant to a decree in the receivership proceedings hereinafter mentioned, as soon as practicable. At such sale the reorganization committee will cause a bid to be made. In case such bid is accepted and the lines of railroad and other properties sold pursuant thereto, the purchasers will incorporate under sections 2585 and 2586 of the Georgia Code or other law as aforesaid, and the corporation thus formed will be the New Company under the plan and the applicant herein. The reorganization committee will cause the applicant to join in this application as soon as the applicant shall be incorporated.

Third. The names of each State in which it is proposed that the applicant operate are: Georgia and Alabama. The applicant may acquire certain real estate of the Old Company situated in the State of Florida, but it is not proposed that applicant shall operate in said State of Florida. The applicant is to take any action necessary to obtain authority to engage in transportation by railroad in said States of Georgia and Alabama.

Fourth. This application is:

(a) For a certificate pursuant to subdivision (18) of section 1 of the interstate commerce act that the present or future public convenience and necessity require or will require that the applicant acquire and operate the lines of railroad and other properties of the Old Company and of its receiver, as aforesaid, and engage in transportation over and by means of the same;

(b) For the authorization, pursuant to subdivision (2) of section 20a of the interstate commerce act, of the issue by the applicant of $5,180,344.07 par value of its preferred stock and 150,000 shares without par value of its common stock in accordance with the provisions of the plan; and

(c) For any other action required to facilitate the consummation of the plan.

Fifth. The purposes and uses of the proposed issue of capital stock are to acquire the lines of railroad and other properties of the Old Company and its receiver, as aforesaid, and to carry out the plan.

Sixth. The reasons briefly stated why the present or future public convenience and necessity require or will require the proposed acquisition and operation, and the facts relied upon to show that the proposed issue of stocks (1) is for some lawful object within the applicant's corporate purposes and compatible with the public interest, which is necessary, or appropriate for, or consistent with the proper performance by the applicant of service to the public as a common carrier, and which will not impair its ability to perform that service, and (2) is reasonably necessary and appropriate for such purpose, are as follows:

RECEIVERSHIP.—On February 25, 1921, a general creditors' bill was filed by Birmingham Trust and Savings Company against the Old Company in the United States District Court for the Northern District of Georgia, Northern Division, and B. L. Bugg, Esq., was on said date appointed receiver of all the lines of railroad and other properties of the Old Company. Ancillary bills were filed in the other districts where the property of the Old Company was located. The Old Company having defaulted under the three mortgages covering its lines of railroad and other properties or some portion thereof, bills of complaint for the foreclosure of said mortgages were filed in said United States District Court and in the ancillary districts, and said B. L. Bugg, Esq., was appointed receiver of all mortgaged lines of railroad and other properties of the Old

Company. Said receivership has since continued, and said receiver has possession of and is now operating said lines of railroad and other properties of the Old Company, except such property as has since been sold pursuant to orders of court. One of the main purposes of the plan is to end the receivership and take said lines of railroad and other properties out of the hands of the court and place them in the hands of a company which will be able to carry on the essential service to the public performed by the lines of railroad now operated by the receiver.

EFFORTS TO REORGANIZE.—The two committees representing respectively the first mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (a predecessor of the Oil Company) and the fifteen-year five per cent income mortgage gold bonds of the Old Company have been trying since the receivership to bring about a reorganization of the lines of railroad and other properties of the Old Company. Without sufficient earning power it was not possible to work out any plan that could be financed.

Said receiver has made every effort to keep said lines of railroad and other properties in good operating condition and to increase their business. The territory served by the lines of railroad of the Old Company is undeveloped and, therefore, unproductive of sufficient volume of traffic to give a dependable revenue. At practically every point where business originates a competitive line is in the field, and it has been extremely difficult to develop new business on the line itself. It has been necessary to go far afield in the solicitation of freight. More than 80 per cent of the gross revenue is from freight and three-fourths of it is derived from through traffic. Most of the increase in business which has been obtained in the last year or two has come from the railroad's connections, and more favorable recent returns are due to the increased activity in the South. As the consolidation of railroads becomes effective, it will be increasingly difficult for an independent small railroad to compete sucessfully for traffic.

Numerous efforts have been made to dispose of said lines of railroad and other properties to other interests and there have been several negotiations with possible purchasers, but no proposition was made that seemed as satisfactory as the one made by Atlantic Coast Line Railroad Company (hereinafter called the Coast Line). No other plan of reorganization has been proposed, and at this time the alternative to approving the plan is to let the properties go to the auction block with no bidders in sight able and willing to acquire the lines of railroad and other properties as a single operating unit.

REORGANIZATION PLAN.—The plan was prepared by said committees representing respectively majorities of said income bonds and of said first mortgage bonds and is based upon an agreement dated February 23, 1926, between said committees and the Coast Line. Said agreement was reached after a period of bargaining at arm's length between said committees and the Coast Line.

The plan contemplates that all claims having priority over the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company formerly held by the United States Government (if it is necessary to pay off the same), obligations of said receiver and receivership and reorganization expenses are to be paid in cash to be provided by the Coast Line upon the acquisition of said lines of railroad and other properties by the applicant, except that obligations not matured at the time of the acquisition may be assumed by the applicant instead of being paid in cash. This provision provides for the payment or retirement of all first and refunding mortgage bonds of the Old Company, and the mortgage securing said bonds is to be released and discharged.

In addition to said first and refunding mortgage bonds there are two bond issues secured on said lines of railroad and other properties of the Old Company or some portion thereof, as follows:

(a) Said first mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (hereinafter called the first mortgage bonds), of which $4,090,000 principal amount are outstanding in the hands of the public; and

(b) Said fifteen-year five per cent income mortgage gold bonds of the Old Company (hereinafter called the income bonds), of which $4,543,906.78 principal amount are outstanding in the hands of the public (exclusive of $400,000 principal amount held as collateral for a loan made to the Old Company, which loan is to be paid off as above provided, and $256,093.22 principal amount held in the treasury of the Old Company).

The provision made in the plan for the income bonds and first mortgage bonds is that the holders thereof who shall assent to the plan as therein provided shall be entitled to received upon consummation of the plan $60 par value of preferred stock of the applicant for each $100 principal amount of bonds, so that there will be issued $5,180,344.07 par value of preferred stock. The Coast Line is to provide cash sufficient to meet the distributive shares of any first mortgage bonds and/or income bonds the holders of which shall not assent to the plan, as aforesaid, and the Coast Line is to receive the shares of preferred stock which would have been issued to such holders had they assented to the plan as aforesaid.

The preferred stock is to be preferred as to cumulative dividends at the rate of 5% per annum (accruing from one year after title to the properties to be acquired by the applicant shall vest in the applicant), and as to assets at 100 and accrued dividends; to be redeemable after January 1, 1935, as a whole but not in part at 103 and accrued dividends; and to have no power to vote except in case of continuing default in the payment of two semiannual dividends, in which case the preferred stock is to have exclusive voting power so long as any default shall continue. Dividends at the rate aforesaid and the redemption of the preferred stock upon the liquidation, mer-

ger, or consolidation of the applicant or any transfer of all or a substantial part of the property of the applicant, are to be guaranteed by the Coast Line. The preferred stock and common stock are more particularly described in the plan.

It is apparent from the terms submitted to the bondholders that it has not been possible to work out a reorganization involving a participation by the stock of the Old Company.

The cash requirements of the plan are to be provided by the Coast Line, and the Coast Line is to receive the entire issue of 150,000 shares without par value of the common stock of the applicant.

Said lines of railroad and other properties to be acquired by the applicant, with their principal termini, points of interchange, etc., are substantally as set forth in Appendix 2 attached to the report of this commission in Valuation Docket No. 1 reported in 75 I. C. C., beginning at page 645, with such additions, eliminations and changes as may have been subsequently made in respect thereof.

The acquisition and operation of said lines of railroad and other properties by the applicant will be within its powers and corporate purposes as set forth in its charter, and as authorized by the laws of the State of Georgia and the State of Alabama.

Seventh. The above-mentioned agreement dated February 23, 1926, between said committees and the Coast Line provides that said committees will bid at said sale of said lines of railroad and other properties, and that the Coast Line will furnish amounts required to qualify as bidders and to pay such portion of the purchase price as may be required to be paid in cash, and will provide cash to take care of receiverships and reorganization expenses and claims having priority over the mortgages as hereinabove stated. Said agreement and the plan are subject ot the approval of the Interstate Commerce Commission and are also subject to the deposit of at least $7,000,000 aggregate principal amount of first mortgage bonds and income bonds on or before September 1, 1926. By the plan, the reorganization committee was substituted in the place of committees under the plan and said agreement.

Eighth. An application has been or will be filed by the Coast Line for authority to guarantee the preferred stock to be issued by the applicant and to acquire the applicant's common stock and such of applicant's preferred stock, if any, as the Coast Line may receive as herein above stated. Inasmuch as said application relates to the same subject matter as this application, request is hereby made that the two applications be heard and considered together.

Ninth. Said reorganization committee will cause the applicant, forthwith upon its incorporation, to file an application herein joining in this application and settng forth additional relevant facts including a statement of the following: (a) Exact corporate name of applicant; (b) the laws under which the applicant is organized; (c) pertinent facts as to its authorization to do business in States other than that by which it is created; and (d) the names, titles, and post-office addresses of the applicant's president, secretary, principal attorney,

and executive officer by whom such application is signed, verified, and filed, and to file with such application copies of the following papers duly authenticated in accordance with the requirements of the commission: (1) Charter; (2) by-laws; (3) resolutions of directors authorizing the issues in respect of which this application is made, and copies of all resolutions of stockholders relating to the same; (4) resolutions of directors designating by name the executive officer by whom the application filed by the applicant is signed, verified, and filed; (5) opinion of counsel; and (6) specimens, or forms where specimens are not available, of all securities in respect of which the application is made.

Wherefore, said reorganization committee requests that your commission: (a) Make a certificate that the present or future public convenience and necessity require or will require the acquisition and operation of said lines of railroad and other properties by the applicant; (b) authorize the issue by the applicant in temporary or definitive form, and if in temporary form the issue of securities of like character in definitive form in exchange therefor, of said $5,180,344.07 par value of its preferred stock and said 150,000 shares without par value of its common stock; and (c) take any other action required to facilitate the consummation of the plan.

Dated, April —, 1926.

FRANCIS R. HART,
GEORGE E. WARREN,
GEORGE E. ROOSEVELT, and
JAMES H. PERKINS,
As the Reorganization Committee above described and not individually,
By ——— ———.

STATE OF NEW YORK,
County of New York, ss:

George E. Warren, being duly sworn, deposes and says: That he is a member of the reorgnaization committee described in the foregoing application; that he has read the foregoing application and is familiar with the matters therein set forth; and that the matters therein set forth are true to the best of his knowledge and belief.

——— ———.

Subscribed and sworn to before me this day of April, 1926.

——— ———, *Notary Public.*

62 *Exhibit 13—Atlanta, Birmingham & Atlantic Railway Company—Reorganization committee*

[Stamped:] Interstate Commerce Commission. Ex. No. 13. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Warren.

The said reorganization committee hereby authorizes the signing, verification, and filing by George E. Warren, or by any other mem-

ber of said reorganization committee, of a return to questionnaire, in such form as may be approved by counsel, in the proceeding instituted by the application dated April 8th, 1926, of the reorganization committee to the Interstate Commerce Commission, said proceeding being known as Finance Docket No. 5454.

Dated, April 28, 1926.

GEORGE E. WARREN,
FRANCIS R. HART,
J. H. PERKINS,
GEORGE E. ROOSEVELT,
As the aforesaid Reorganization Committee.

63 *Exhibit 32—List of agency stations located on A., B. & A. Railway exclusively*

[Stamped:] Interstate Commerce Commission. Ex. No. 32. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Edwards.

Abanda, Ala.
Abba, Ga.
Aberdeen, Ga.
Alma, Ga.
Alvaton, Ga.
Ambrose, Ga.
Ashland, Ala.
Beach, Ga.
Bristol, Ga.
Byromville, Ga.
Chatterton, Ga.
Chelsea, Ala.
Coffee, Ga.
Coolidge, Ga.
Cragford, Ala.
Crosland, Ga.
Charing, Ga.
Dooling, Ga.
Erin, Ala.
Gay, Ga.
Haralson, Ga.
Hatley, Ga.
Ideal, Ga.
Lilly, Ga.
Lineville, Ala.
Manchester, Ga.
Mauk, Ga.
Merrillville, Ga.
Murphy, Ga.
Mystic, Ga.
Nicholls, Ga.
Norman Park, Ga.
Omega, Ga.
Osierfield, Ga.
Pyriton, Ala.
Rebecca, Ga.
Rupert, Ga.
Rockingham, Ga.
Stovall, Ga.
Tyrone, Ga.
Wadley, Ala.
Woodland, Ga.
Wray, Ga.

64 *Exhibit 33—Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—List of industries located on the line of the Atlanta, Birmingham & Atlantic Railway, April 15, 1926*

[Stamped:] Interstate Commerce Commission. Ex. No. 33. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Edwards.

H. S. Young, assistant general freight agent, 417 Brown Building, Atlanta, Ga.; C. B. Kealhofer, freight traffic manager, 415 Brown Building, Atlanta, Ga.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver

Industry or firm	Character of business	Annual tonnage or approximate capacity
Alma, Ga.:		
Farmers Gin Company	Ginnery	1,000 bales.
Jones Ice Company	Ice house	50 cars annually.
Co-Operative Stock Pens	Livestock	50 cars annually.
H. W. Andrews	Mules and horses	10 cars annually.
J. E. Dyal	Naval stores	150 cars annually.
Standard Oil Company	Petroleum products	25 cars annually.
Pan American Petroleum Corporation	Petroleum products	20 cars annually.
Georgia Planing Mill Company	Planing mill	300 cars annually.
Ricks Lumber Company	Planing mill	10,000 feet annually.
Mill City Stave Mill Company	Stave mill	75 cars annually.
Tobacco Warehouse Company (Brame & Harris, Managers).	Tobacco sales warehouse	Unlimited.
J. L. Young Company	Wholesale groceries	50 cars annually.
Alma Grocery Company	Wholesale groceries	25 cars annually.
Ambrose, Ga.:		
Holland Manufacturing Company	Cotton warehouse	2,000 bales.
Paulk Gin Company	Ginnery	1,500 bales.
Holland Manufacturing Company	Ginnery	2,000 bales.
Harvey & Dickerson	Live stock	10 cars annually.
Harvey Brothers	Naval stores	50 cars annually.
S. B. Butler	Planing mill shingles	6,000 feet daily.
Seaboard Farms	Packing house	600 cars annually.
Aspinwall, Ga.:		
Thomas Brothers	Naval stores	50 cars annually.
Atlanta, Ga.:		
Union Carbide Company	Carbide	12 cars annually.
Eclipse Coal Company	Coal	170 cars annually.
R. O. Campbell Coal Company	Coal, building material	180 cars annually.
City Coal & Grading Company	Coal, sand	85 cars annually.
Griffin Construction Company	Contractors	8 cars annually.
Knott Carmichal Furniture Company	Furniture manufacturers	50 cars annually.
Frank G. Lake	Lumber, building material	250 cars annually.
Addison-Rudisal Company	Lumber shingles	100 cars annually.
Godfrey Marble & Tile Company	Marble and tile plant	20 cars annually.
Capital City Casket Company	Mfgrs. of caskets	100 tons annually.
World Manufacturing Company	Mfgrs. of disinfectants	100 tons annually.
Atlanta Chemical Company	Mfgrs. of fertilizer	8,000 tons annually.
Davidson Kennedy Company	Mfgrs. of oil mill mchry	50 cars annually.
J. W. Killingsworth	Mfgrs. of car springs	
Reed Oil Company	Petroleum products	324 cars annually.
Sinclair Refining Company	Petroleum products	300 cars annually.
Holcomb Petroleum Company	Petroleum products	125 cars annually.
Pan American Petroleum Corporation	Petroleum products	400 cars annually.
White Eagle Oil Company	Petroleum products	125 cars annually.
L. E. Holloway Company	Produce fruit	300 cars annually.
W. H. Cunningham	Produce fruit	175 cars annually.
Edwards Brothers	Product fruit	50 cars annually.
R. D. Grove & Company	Produce fruit	250 cars annually.
O. H. Wright	Produce fruit	25 cars annually.
Walker Roofing Company	Roofing	30 cars annually.
O. A. Smith Company	Roofing brick	25 cars annually.
Thos. F. Seitzinger's Sons Inc.	Scrap iron and brass	175 cars annually.
Merchants & Mfgrs. Warehouse Co.	Storage and warehouse	300 cars annually.
Atlanta Flour & Grain Company	Wholesale flour grain	450 cars annually.
McCord Stewart Company	Wholesale grocers	125 cars annually.
H. L. Singer Company	Wholesale grocers	30 cars annually.
Paradies & Rich	Wholesale grocers	175 cars annually.
Cox Brokerage Company	Wholesale grocers	200 cars annually.
Lee & Beall Company Inc.	Wholesale mdse. brokers	500 cars annually.
Atlanta Kindling Wood Company	Wood charcoal	15 cars annually.
Barbers, Ga. (R. F. D., Moultrie, Ga.): Moultrie Pine & Products Company	Tar and charcoal	10 cars annually.
Ben Hill, Ga.: J. W. Starr & Sons (Atlanta, Ga.)	Planing mill	15,000 feet daily.
Bessemer, Ala.:		
C. F. Cook	Repair shop	
F. S. Royster Guano Company	Mfgrs. fertilizer	40,000 tons annually.
Bessemer Lumber Company	Lumber building material	200 cars annually.
Standard Oil Company	Petroleum products	50 cars annually.
Keith Perkins & Ware Company	Petroleum products	25 cars annually.
Cook & Britener	Petroleum products	25 cars annually.
Sinclair Refining Company	Petroleum products	20 cars annually.
John Colley	Warehouse	3,000 tons annually.
Bessemer Feed Mills	Wholesale feed	
Morton Hardware Company	Wholesale hardware	50 cars annually.
Blake, Ala. (R. F. D., Roanoke, Ala.): M. P. Craver.	Brick yard	30,000 weekly.
Bolen, Ga.: W. T. Brinson	Naval stores, wood	200 cars annually.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Birmingham, Ala.:		
Alabama Barrel Company	Barrels	10 cars annually.
Birmingham Brick Company	Brick	300 cars annually.
Smith Coal Company	Coal	
Hygienic Ice & Coal Company	Coal, ice	100 tons daily.
Cash Lumber Company	Lumber, sash, doors	
Phillips Lumber Company	Lumber, sash, doors	
City Sash & Door Company	Lumber, sash, doors	300 cars annually.
E. V. Sanders Lumber Company	Lumber, sash, doors	300 cars annually.
Federal Asphalt Paving Company	Paving contractors	200 cars annually.
Exchange Distributing Company	Produce, fruits	200 cars annually.
Marshall, Jordan & Keith	Produce, fruits	100 cars annually.
Bell Rogers Produce Company	Produce, fruits	100 cars annually.
F. F. Norton & Sons Company	Produce, fruits	75 cars annually.
Hamilton Rogers Produce Company	Produce, fruits	50 cars annually.
Pippen Brothers Produce Company	Produce, fruits	25 cars annually.
Southern Steel Works, Inc	Steel and iron works	
Bristol, Ga.:		
Carter & Carter	Naval stores	50 cars annually.
T. L. Tuten	Naval stores	25 cars annually.
M. H. Steedly	Naval stores	50 cars annually.
J. G. Haire	Naval stores	50 cars annually.
G. H. Hunter	Naval stores	25 cars annually.
Brunswick, Ga.:		
Buick Motor Company	Automobile storage	
A. Halliday	Cooperage	25 cars annually.
M. B. McKinnon	Broker, commission mer	
C. A. Taylor	Broker, commission mer	
Glynn Canning Company	Cannery	
Georgia Veneer & Package Company	Crate material	1,000 cars annually.
Georgia Creosoting Company	Creosoting, ties, lumber	100,000 feet daily.
Strachan Shipping Company	Exporters	
Southern Forwarding Company	Freight forwarders	
United Supply Company	Hardware	
United Distributing Company	Hardware	
Glynn Ice Company	Ice plant, cold storage	160 tons daily.
Mutual Light & Water Company	Light plant	
Maritime Industries Company	Lumber	25,000 feet daily.
Lerio Patent Cup Company	Turpentine cups	150 cars annually.
Southern Aromatic Company	Mfgrs	
Georgia Rosin & Products Company	Naval stores	25,000 barrels annually.
Hercules Powder Company	Naval stores	295 barrels daily.
Wall & Macklin	Packing plant	50 cars annually.
Lang Planing Mill	Planing mill	50,000 feet daily.
Stuckey & Roughton	Produce, commission mer	
Clyde Steamship Company	Ship line	
City of Brunswick	Unloading track	
Downing Company	Wholesale grocers	
Lazarus & Company	Wholesale grocers	
J. J. Lissner	Wholesale grocers	
Byromville, Ga.:		
Lester Ricks Oil Mill	Cottonseed oil mill	30 tons daily.
Groves Brothers	Cotton storage	1,000 bales.
Cobb Lumber Company	Planing mill	20,000 feet daily.
Chatterton, Ga. (R. D., Nicholls, Ga.):		
H. Kirkland	Naval stores	50 cars annually.
I. J. Williams	Sand	100 cars annually.
Coffee, Ga.:		
H. H. Johnson	Naval stores	20 cars annually.
Walter Bennett	Naval stores	20 cars annually.
Coolidge, Ga.:		
S. A. Sherrod	Planing mill	30 cars annually.
Boykin Harrison	Potato-curing warehouse	10 cars annually.
W. S. Jones	Variety works	
Coalmont, Ala. (R. F. D., Malone, Ala.):		
Brookside Pratt Mining Company	Coal mine	700 tons daily.
Cragford, Ala.: Cragford Warehouse Company	Cotton warehouse	500 bales.
Crossland, Ga.:		
W. J. White, agent for the Shackelford Brown Company, Albany, Ga.	Potato curing warehouse	10,000 bushels.
Dillon, Ga.: E. Gibson	Naval stores	50 cars annually.
Douglas, Ga.:		
R. W. Griffin	Broker	
Douglas Oil & Fertilizer Company	Fertilizer and feed	10,000 tons annually.
Watt Holmes Hardware Company	Hardware	
Douglas Ice Company	Ice	30 tons daily.
Georgia Oil Company	Kerosene oil, gas	125 cars annually.
Douglas Light & Power Company	Light and water	
Douglas Marble & Granite Company	Marble and granite	

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Douglas, Ga.—Continued.		
Standard Oil Company	Petroleum products	50 cars annually.
J. F. Darby & Brother	Planing mill	70,000 feet daily.
Pat Darby Lumber Company	Planing mill	20,000 feet daily.
Douglas Oil & Fertilizer Company	Potato-curing WH	25,000 bushels.
Georgia Leaf Tobacco Company	Tobacco redrying plant	
Farmers Tobacco Warehouse Company (Pegram & Critcher, Mgrs.).	Tobacco sales warehouse	
Red Tobacco Warehouse (Knott & Sikus, Mgrs.).	Tobacco sales warehouse	
Big Tobacco Warehouse (King & Ostinger, Mgrs.).	Tobacco sales warehouse	
Growers Tobacco Warehouse (McLean & George, Mgrs.).	Tobacco sales warehouse	
Austin Company, Inc	Tobacco sales warehouse	
H. Kirkland	Turpentine products	50 cars annually.
J. L. Young Company	Wholesale groceries	
Conrad Spur, Ga. R. F. D., Waycross, Ga.: J. D. Sweat.	Ginnery and mill	35 cars annually.
Cordele, Ga.:		
Chero Cola Bottling Company	Bottlers	
R. S. Barfield	Broker	
Cordele Compress	Cotton compress	1,000 bales daily.
Read Phosphate Company	Mfgrs fertilizer	200 tons daily
F. L. Bartholomew	Hardware	
Beechwood Band Mill Company	Planing mill	100,000 feet daily.
Watt Holmes Hardware Company	Retail hardware	
Williams Brothers	Storage warehouse	2,500 square feet.
Cordele Bonded Warehouse	Warehousemen	3,000 square feet.
City of Cordele Water Works	Water plant	
Heard Grocery Company	Wholesale grocers	
Pridgen Brothers	Wholesale grocers	
Durand, Ga.:		
Durand Warehouse Company	Cotton warehouse	1,000 bales.
Durand Potato Warehouse	Potato-curing warehouse	10,000 bushels.
Eureka, Ala. R. F. D., Talladega, Ala.: Eureka	Coal mine	1,000 tons daily.
Fendig, Ga.: M. L. McKinnon	Naval stores	50 cars annually.
Fitzgerald, Ga.:		
Anderson Motor Company	Automobiles	
L. L. Griner	Autos, buggies, wagons	40 cars annually.
Martin Manufacturing Company	Auto repair shop	
F. B. Harris & Company	Bananas and other fruits	
Standard Supply Company	Building material	300 cars annually.
Fitzgerald Cotton Compress	Cotton compress	1,000 bales.
Ben Hill Warehouse Company	Cotton, corn, grain	
Fitzgerald Cotton Gin Company	Cotton, cottonseed, fertilizer, ice, coal.	
Planters Warehouse Company	Cotton fertilizer	3,000 bales.
Union Cotton Oil Company	Cotton gin oil mill	
Standard Warehouse Company	Cotton mill products	50 cars annually.
Ben Hill Elevator Company	Grain elevator	12,000 bushels.
Watt Holmes Hardware Company	Hardware	
Fitzgerald Hardware Company	Hardware farm implements	
Fitzgerald Ice Company	Ice factory	75 tons daily.
Fitzgerald Waste & Metal Company	Junk	
Broadhurst and Williams	Live stock automobiles	
Fitzgerald Cotton Oil Mill	Oil mill	
Standard Oil Company	Petroleum products	60 cars annually.
Sinclair Refining Company	Petroleum products	50 cars annually.
Casper Hide & Junk Company	Planing mill	15,000 feet daily.
Newcome & Young	Stave mill	
Lon Dickey Potato Curing Company	Sweet potatoes	35,000 bushels.
Cobb Guinn Tobacco Company	Tobacco redrying plant	25,000 pounds daily.
Lon Dickey Tobacco Warehouse Company (J. S. Mason, Mgr.).	Tobacco	
Central Tobacco Warehouse Company (E. C. Brooks, Mgr.)	Tobacco	
Fitzgerald Power Company	Water & lights	
Isler Grocery Company	Wholesale groceries and produce.	
Phoenix Warehouse Company	Wholesale groceries	
Davis Brothers Company	Wholesale groceries	
Gay, Ga.:		
Gay Warehouse Company	Cotton storage	2,000 bales.
W. W. Fitzgerald	Grist mill	50 bushels daily.
Gay & Keith	Potato curing warehouse	10,000 bushels.
Guysie, Ga.: The Douglas Company	Naval stores	50 cars annually.
Gyco, Ga.: Georgia Yam Curing Company, (39 Cone St., Atlanta, Ga.).	Potato curing warehouse	75 cars annually.
Hatley, Ga.: A. C. Whelchel Brothers	Cotton storage	200 bales.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Haywood Spur, Ga. (R. F. D., Waycross, Ga.): J. Lindlum.	Naval stores	24 cars annually.
Helena, Ala.:		
Paramount Coal Company (Adams, Rowe & Norman, Brown), Marx Building, Birmingham, Ala., agents.	Coal mine	500 tons daily.
Buck Coal Company of Helena, Inc	Coal mine	100 tons daily.
Hortense, Ga.:		
B. T. Raulerson	Naval stores	20 cars annually.
W. D. Humphreys	Naval stores	20 cars annually.
Ideal, Ga.:		
H. T. Lightner Ginnery	Ginnery	100 bales daily.
Nelson Cotton Company	Ginnery	100 bales daily.
T. E. Nelson	Cotton warehouse	3,000 bales.
Hardison and Robertson	Grist mill	25 bushels daily.
Planters Products Company	Potato-curing warehouse	10,000 bushels.
H. S. Taylor & Company	Planing mill	300 cars annually.
Junction City, Ga.:		
Junction City Mfg. Company	Caskets	50 cars annually.
Butler Lumber Company	Planing mill	100,000 feet daily.
Greenfield & Waterman (39 Forsyth St., Atlants, Ga.).	Sand pit	300 cars annually.
Downs Sand Company	Sand pit	500 cars annually.
J. R. Hime	Sand pit	300 cars annually.
Moorac Sand Company	Sand pit	1,000 cars annually.
La Grange, Ga.:		
Claude H. Hutchinson	Bagging and ties	200 cars annually.
Ash Supply & Coal Company	Coal	25 cars annually.
Citizens Ice & Coal Company	Coal and ice	40 tons daily.
Dunson Mills	Cotton mill	23,168 spindles.
Elm City Cotton Mill	Cotton mill	11,664 spindles.
Hillside Cotton Mill	Cotton mill	30,000 spindles.
Unity Cotton Mill	Cotton mill	11,232 spindles.
Unity Spinning Mill	Cotton mill	14,688 spindles.
Security Warehouse	Cotton fertilizer	5,000 bales.
Troupe Warehouse Company	Cotton fertilizer	8,000 bales.
La Grange Iron Works	Foundry	
Fincher-Traylor Company	Petroleum products	
	Fords	100 cars annually.
City Feed & Grain Company	Grain and flour	50 cars annually.
Daniel, Inc	Grain and flour	100 cars annually.
La Grange Cotton Mill Company	Oil mill	40 tons daily.
W. L. Wisdom	Marble and granite	
W. S. Askew Lumber Company	Planing Mill	70,000 feet daily.
J. T. Gorham	Roofing, cement, lime	
Valley Waste Mill	Waste	10,000 pounds daily.
Dixie Grocery Company	Wholesale groceries	
B. S. Willis, jr	Wholesale groceries	
J. E. Dunson Bros. Company	Wholesale groceries	
Stamps & Company	Wholesale produce	125 cars annually.
Lilly, Ga.:		
E. H. Smith	Fertilizer	2,500 tons annually.
Lilly Gin Company	Seed dealers	15 cars annually.
Farmers Warehouse Company	Warehouse	
Lineville, Ala.:		
Clay County Oil Mill	Cottonseed oil	2,500 tons annually.
Farmers and Merchants Warehouse	Cotton storage	2,500 bales.
Farmers Union Warehouse	Cotton warehouse	1,000 bales.
Clay County Fertilizer Company	Mixing plant	3,000 tons annually.
Standard Oil Company	Petroleum products	20 cars annually.
Clay Hardware Company	Petroleum products	20 cars annually.
Lineville Motor Company	Petroleum products	10 cars annually.
Pan American Petroleum Corporation	Petroleum products	20 cars annually.
Lorne, Ala. (R. F. D., Lineville, Ala.): Crane & Eubanks.	Sand pit	250 cars annually.
Manchester, Ga.:		
Manchester Cotton Mill	Cotton mill	25,000 spindles.
Manchester Ice & Fuel Company	Ice plant	18 tons daily.
I. R. Robertson	Oil station	
City of Manchester	Power plant	
Standard Oil Company	Petroleum products	25 cars annually.
Union Mercantile Company	Warehouse	
Mershon, Ga.:		
Davis Zirkle Lumber Company	Lumber	50 cars annually.
J. C. Strickland	Naval stores	25 cars annually.
Montezuma, Ga.:		
Buick Automobile Company	Autos and accessories	
Ford Motor Company	Automobiles	
McKenzie Hangabook Company	Builders' supplies, coal	

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Montezuma, Ga.—Continued.		
McKenzie Gin & Cotton Company	Cotton, cottonseed	
McKenzie Warehouse Company	Cotton, cottonseed meal	
Farmers Warehouse Company	Cotton fertilizer	
Montezuma Cotton Oil Company	Cotton seed oil	
Montezuma Fertilizer Company	Fertilizer	17,500 tons annually.
Coweta Fertilizer Company	Fertilizer	
Read Phosphate Company	Fertilizer	
Whitewater Power Company	Ice factory power plant	
H. A. Dover & Sons	Livestock, coal, cotton, wholesale groceries.	100 cars annually.
Reynolds Lumber Company	Lumber logs	100 cars annually.
Montezuma Knitting mills	Mfgrs knit underwear	
Hangabook & Perry	Mules and horses	
McKenzie Chemical Company	Peach spray mfgrs	50 cars annually.
Flint River Lumber Company	Planing mill	
Adams Company	Wholesale groceries	
Gallagher Grocery Company	Wholesale groceries	
Moultrie, Ga.:		
Nace Brick Company	Brick	
Moultrie Compress Company	Cotton compress	1,000 bales.
Moultrie Cotton Mill	Cotton mill	11,000 spindles.
Moultrie Grocery Produce Company	Dairy products	
Moultrie Fertilizer & Mfg. Company	Fertilizer	5,000 tons annually.
Moultrie Oil & Fertilizer Company	Fertilizer	7,000 tons annually.
Colquitt County Lumber Company	Lumber	
Riverside Manufacturing Company	Mattresses	
Davis Jenkins Lumber Company	Planing mill	
Colquitt County Tobacco Warehouse Co. (Smith and Smith, Managers).	Tobacco sales warehouse	10,000 feet daily.
Wolford Oil Company	Petroleum products	
Moultrie Grocery Company	Wholesale groceries	15 cars annually.
H. P. Plair	Wholesale groceries	
Nicholls, Ga.:		
Hall & Dayley	Crossties	
George Meeks	Crossties, lumber	
Powers Hardware Company	Hardware supplies	
Hall Taylor Trading Company	Hardware supplies	
Nicholls Truck Growers Association	Packing house	
Norman Park, Ga.:		
Planters Warehouse Company	Cotton storage	1,000 bales.
Norman Park Brokerage Company	Potato-curing warehouse	5,000 bushels.
Norman & Griffin	Naval stores	52 cars annually.
Norwich, Ga.: W. C. Harkey	Sand pit	5 cars daily.
Oglethorpe, Ga.:		
Lester Ricks Oil Company	Cotton gin, fertilizer	1,000 bales.
W. E. Webb	Cotton storage	1,000 bales.
Farmers Warehouse Company	Cotton storage	1,000 bales.
M. L. Shealey's Sons	Cotton fertilizer	1,500 bales, 300 tons.
Cobb Lumber Company	Planing mill	100,000 feet daily.
Macon County	Petroleum products	15 cars annually.
Omega, Ga.:		
Omega Hardware Company	Cotton storage	500 bales.
J. W. Lang & Company	General merchandise	
J. H. Hornbuckle	Merchandise livestock	
Omega Hardware Company	Hardware	
Patrick Plant Company	Vegetable plants	
Omega Plant Company	Vegetable plants	
Pelham, Ala.:		
Alabama Cooperage Company	Cooperage planing mill	15,000 feet daily.
Superior Lime & Hydrate Company	Lime manufacturers	600 cars annually.
Pioneer, Ala. (R. F. D., Birmingham, Ala.):	Creosoting plant	10 cars daily.
Pioneer Lumber & Creosoting Company.		
Rebecca, Ga.:		
M. L. Story	Cottonseed, peanuts	50 tons annually.
Rebecca Turpentine Company	Naval stores	36 cars annually.
Planters Warehouse Company	Warehouse	500 bales.
Roanoke, Ala.:		
Myhand Grocery Company	Coal, groceries	15 cars annually.
Handley Manufacturing Company	Cotton mill	18,000 spindles.
Roanoke Warehouse	Cotton warehouse	2,000 bales.
W. H. McMurray & Company	Feed, flour, hay, hardware	35 cars annually.
Roanoke Guano Company	Fertilizer	20,000 tons annually.
Royster Guano Company	Guano warehouse	60 tons annually.
City of Roanoke	Light plant	
Adams Planing Mill	Lumber	40 cars annually.
C. E. Warlick Marble Works	Marble works	10 cars annually.
F. R Lane	Petroleum products	50 cars annually.
Gulf Refining Company	Petroleum products	40 cars annually.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Roanoke, Ala.—Continued.		
Sinclair Refining Company	Petroleum products	25 cars annually.
W. S. Kirk	Planing mill	15,000 feet daily.
Askew Lumber Company	Planing mill	300 cars annually
Jones & Huey	Wholesale groceries	100 cars annually
Rockingham, Ga.:		
Carter & Carter	Naval stores	50 cars annually.
The Hatton Company	Naval stores	50 cars annually.
Haggard Stave Company	Stave mill	300 cars annually.
Haggard, Love & Merritt	Produce melons	50 cars annually.
Roma, Ala. (R. F. D., Birmingham, Ala.): Bell Saw Mill Company (Birmingham, Ala.).	Planing mill	30,000 feet daily.
Senoia, Ga.:		
Standard Oil Company	Petroleum products	30 cars annually.
L. L. Hutchinson	Potato-curing warehouse	10,000 bushels.
Georgia Peanut Grocers Association	Peanuts	
Pan American Petroleum Corporation	Petroleum products	20 cars.
Sessoms, Ga.: Waycross Lumber Company	Planing mill	50,000 feet daily.
Southland, Ga.: M. O. Bryant	Grist mill	25 bushels daily.
Talbotton, Ga.:		
Farmers warehouse	Cotton storage	1,400 bales.
Talbotton Trap Rock Company	Crushed stone	200 tons daily.
J. D. Lawson	Grist mill	25 bushels daily.
Lime Cola Bottling Company	Ice house	
Standard Oil Company	Petroleum products	36 cars annually.
Talladega, Ala.:		
Talladega Hardware Company	Automobiles	35 cars annually.
Wikle Sims Motor Company	Automobiles	50 cars annually.
Giddens Supply Company	Coal	
Farmers Warehouse Company	Cotton storage	3,000 bales.
Royster Guano Company	Fertilizer	25,000 tons annually.
Jackson Tinney Lumber Company	Planing mill	75,000 feet daily.
Southern Roads Company	Storage	
American Railway Express Company	Warehouse and office	
Sinclair Refining Company	Petroleum products	25 cars annually.
Thomasville, Ga.:		
Watt & Tuck	Coal, lime	10 cars lime, 20 cars coal.
Georgia Crate & Basket Company	Crate material baskets	300 cars annually.
W. H. Burch & Son	Grist mill, coal yard	30 cars annually.
Gulf Refining Company	Petroleum products	70 cars annually.
Co-Operative Oil Company	Petroleum products	20 cars annually.
Wofford Oil Company	Petroleum products	40 cars annually.
Sinclair Refining Company	Petroleum products	40 cars annually.
Texas Company	Petroleum products	120 cars annually.
Kirby Planing Mill	Planing mill	150 cars annually.
Caldwell Planing Mill	Planing mill	300 cars annually.
Robinson Hardware Company	Hardware	
Thomasville Hardware Company	Hardware	
Thomas County Tobacco Company (Guy S. Jones, manager).	Tobacco sales warehouse	75 cars annually.
Tifton, Ga.:		
Tifton Coal Company	Coal	4,000 tons annually.
W. A. Puckett Coal Company	Coal and coke	50 cars annually.
Standard Oil Company	Petroleum products	60 cars annually.
The Texas Company	Petroleum products	100 cars annually.
Wofford Oil Company	Petroleum products	30 cars annually.
Pan American Petroleum Corporation	Petroleum products	25 cars annually.
Goodman Golden Lumber Company	Planing mill	20,000 feet daily.
Tifton Remilling Company	Planing mill	15,000 feet daily.
Tifton Hardwood Company	Planing mill	25,000 feet daily.
Tifton Potato Curing Company	Potato-curing warehouse	15,000 bushels daily.
Wilder Lumber Company	Planing mill	150 cars annually.
Dixie Warehouse Company (W. E. Fenner, manager).	Tobacco sales warehouse	
Imperial Tobacco Company	Tobacco redrying plant	
Banner Warehouse (J. L. Bowen, manager).	Tobacco sales warehouse	
New Brick Warehouse (S. H. Winstead, manager).	Tobacco sales warehouse	
International Agricultural Corp.	Fertilizer plant	75,000 tons annually.
Tyrone, Ga.: Redwine Brothers	Fertilizer mixing plant	
Union City, Ga.:		
J. H. Estes Mfg. Company	Backbands	100 dozen daily.
L. E. Whittier	Cabinetmakers	
Creel Lumber Company	Planing mill	300 cars annually.
Farmers Co-Operative Marketing Asso.	Potato-curing warehouse	10,000 bushels.
Upson, Ga., (R. F. D., Douglas, Ga.): J. M. Ashley	Naval stores	50 cars annually.
Vance Spur, Ga. (R. F. D., Tifton, Ga.): Berry Rigdon.	Naval stores	50 cars annually.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Vienna, Ga.:		
Barfield Manufacturing Company	Boxes, crates	300 cars annually.
Barfield Manufacturing Company	Ice plant	20 tons daily.
Vienna Gin Company	Cotton gin	
Walton Brothers	Feed and corn mill	
J. P. Heard	Fertilizer mixers	500 tons annually.
Vienna Hardware Company	Hardware	
Vienna Electric Light Company	Light and power	
Wofford Oil Company	Petroleum products	25 cars annually.
Planters Products Company	Potato-curing warehouse	
J. P. Heard	Wholesale groceries	
Wadley, Ala.:		
Wadley Gin Company	Cotton ginnery	1,000 bales.
J. A. Fuller	Petroleum products	50 cars annually.
Cotton Warehouse & Storage Company	Warehouse	1,000 bales.
Warm Springs, Ga.:		
Warm Springs Casket Company	Mfgrs of caskets	
Warm Springs Planing Mill	Planing mill	25,000 feet daily.
Waycross, Ga.:		
Bunn Cadillac Company	Automobiles	40 cars annually.
Hereford Morgan Hardware Company	Hardware	30 cars annually.
Georgia Hide & Fur Company	Hides	36 cars annually.
Sinclair Refining Company	Petroleum products	50 cars annually.
The Texas Company	Petroleum products	36 cars annually.
Enterprise Manufacturing Company	Planing mill	30,000 feet daily.
Hiers Planing Mill	Planing mill	25,000 feet daily.
Waycross Tobacco Warehouse Company (Brown and Crabtree, Mgrs.).	Tobacco sales warehouse	50 cars annually.
Watt Hardware Company	Wholesale hardware	35 cars annually.
J. J. Wilder	Wholesale honey	
Westover, Ala.: L. H. Butler	Planing mill	10,000 feet daily.
Woodbury, Ga.:		
Durand & Gill	Insecticide plant	300 tons per season.
Gulf Refining Company	Petroleum products	50 cars annually.
Anthony Lumber Company	Planing mill	10 cars annually.
Woodland, Ga.:		
Planters Warehouse Company	Cotton storage	500 bales.
Georgia Cushion & Wrapper Co	Excelsior packing mats	15 cars annually.
C. W. Matthews	Peach packing house	50 cars annually.
Mills & Trussell	Peach packing house	20 cars annually.
Braddy Brothers	Peach packing house	15 cars annually.
Wooddall & Jordan	Peach packing house	10 cars annually.
Williams & McDaniel	Peach packing house	3 cars annually.
A. G. Jordan Lumber Company	Planing mill	15,000 feet daily.
J. W. Starr & Sons (Atlanta, Ga.)	Planing mill	100,000 feet daily.
Woodward, Ala.:		
Woodstock Slag Corporation	Slag	
Woodward Iron Company	Steel and iron products	
American Tar Products Company		

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Exhibit 34

[Stamped:] Interstate Commerce Commission. Ex. No. 34. Applicant's Docket Nos. 5454, 5470. Date, May 20, 1926. Witness: Edwards.

Statement of freight revenue on traffic delivered to A. C. L.; L. & N.; N. C. & St. L.

	1925	1924	1923	1922
A. C. L.	$412,650.12	$346,417.70	$351,966.06	$331,599.99
L. & N.	529,424.26	356,393.06	292,498.44	197,814.83
N. C. & St. L.	223,425.31	198,495.81	187,922.40	141,006.49
Total	1,165,499.69	901,306.57	832,386.90	670,421.31
Increase over 1922	495,078.38	230,885.26	161,965.59	
Percentage	73.8	34.4	24.1	

Statement of freight revenue on traffic received from A. C. L.; L. & N.; N. C. & St. L.

	1925	1924	1923	1922
A. C. L.	$594,128.84	$439,936.36	$421,799.30	$358,382.98
L. & N.	181,668.99	198,561.85	209,651.34	178,535.46
N. C. & St. L.	155,796.93	144,348.18	121,957.86	140,365.46
Total	931,594.76	782,846.39	763,408.50	677,583.90
Increase over 1922	254,010.86	105,262.49	85,824.60	
Percentage	37.5	15.5	12.6	
Total received and delivered [1]	2,097,094.45	1,684,152.90	1,595,795.40	1,348,005.21
Increase over 1922	749,089.24	336,147.75	247,790.19	
Percentage	55.5	24.9	10.9	

[1] About 25% duplication each year account through traffic included in both receipts and deliveries.

66 *Exhibit 35.—Statement of freight revenue on all traffic*

[Stamped:] Interstate Commerce Commission. Ex. No. 35. Applicant's Docket Nos. 5454, 5470. Date May 20, 1926. Witness: Edwards.

	1925	1924	1923	1922
A., B. & A. stations to A., B. & A. stations	$841,643	$888,652	$883,431	$794,929
A., B. & A. stations to connections	1,275,290	1,089,397	1,031,973	930,343
Connections to A., B. & A. stations	1,362,443	1,101,425	989,734	855,921
Connections to connections (A., B. & A. intermediate carrier)	1,245,588	913,078	979,207	743,229
Total	4,724,964	3,992,552	3,884,345	3,324,432

INCREASE IN 1925 OVER 1922

		Percentage
A., B. & A. stations to A., B. & A. stations	$46,714	5.8
A., B. & A. stations to connections	344,947	37.1
Connections to A., B. & A. stations	506,522	59.1
Connections to connections (A., B. & A. intermediate carrier)	502,349	67.5
Total	1,400,532	42.1

67 *Exhibit 36—Estimated revenue on Florida traffic*

[Stamped:] Interstate Commerce Commission. Ex. No. 36. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Edwards.

	1925	1924	1923	1922	1917	1916
A. C. L.—Offerman:						
Northbound	$275,465	$234,385	$237,871	$219,672	$69,763	$46,573
Southbound	423,948	314,082	301,425	255,829	103,544	120,448
Total	699,413	548,467	539,296	475,501	173,307	167,021
S. A. L.—Thalmann:						
Northbound	148,540	119,974	122,032	73,633	35,105	24,837
Southbound	316,120	198,817	143,792	169,249	97,309	99,473
Total	464,660	318,791	265,824	242,882	132,414	124,310
G. S. & F.—Cordele:						
Northbound	1,522	2,317	1,929	1,941	9,265	11,092
Southbound	11,785	10,183	9,128	9,788	16,540	14,266
Total	13,307	12,500	11,057	11,729	25,805	25,358
Total:						
Northbound	425,527	356,676	361,832	295,246	114,133	82,502
Southbound	751,853	523,082	454,345	434,866	217,393	234,187
Grand total	1,177,380	879,758	816,177	730,112	331,526	316,689
Increase over 1916	860,691	563,069	499,488	413,423	14,837	
Percentage	271.7	177.8	157.7	130.5	4.7	
Increase over 1922	447,268	149,646	86,065			
Percentage	61.2	20.5	11.7			

68 *Exhibit 37.—Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver.—Summary of passenger traffic for the period July 1, 1907, through December 31, 1925*

[Stamped:] Interstate Commerce Commission. Ex. No. 37. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Edwards.

Years ended June 30	Average mileage operated	Passengers carried 1 mile	Passenger-miles per mile of road	Years ended Dec. 31	Average mileage operated	Passengers carried 1 mile	Passenger-miles per mile of road
1908	491.02	14,281,806	29,086	1916	637.18	25,741,949	40,399
1909	628.10	19,304,050	30,734	1917	637.18	29,834,392	46,823
1910	654.18	22,594,078	34,538	1918	636.64	30,846,418	48,451
1911	661.90	26,842,830	40,552	1919	636.64	34,380,480	52,093
1912	661.90	29,727,750	44,912	1920	636.64	34,935,434	54,874
1913	653.55	28,576,265	43,721	1921	635.19	12,577,446	19,801
1914	645.52	30,482,625	47,221	1922	635.19	15,281,973	24,058
1915	642.14	22,652,277	35,276	1923	635.19	18,174,413	28,613
1916	639.44	24,371,745	38,114	1924	635.19	16,670,000	26,244
				1925	635.19	16,632,000	25,759

For the purpose of comparison there is included results of Federal operations for 1918, 1919, and January and February, 1920, and Federal lap-overs for 1920 and 1921.

Passenger revenue per mile of road operated calendar year 1925

Atlanta, Birmingham & Atlantic Railway Co.	[illegible]847
Atlanta & West Point-Western Railway of Alabama	7,818
Atlantic Coast Line Railroad	4,567
Central of Georgia Railway	3,175
Florida East Coast Railway	12,607
Georgia Railroad	3,281
Georgia, Southern & Florida Railway	4,807
Louisville & Nashville Railroad	4,522
Nashville, Chattanooga & St. Louis Railway	3,800
Seaboard Air Line Railway	3,468
Southern Railway	4,503

69 *Exhibit 38.—Statement showing, in net tons, total interchange between Atlantic Coast Line Railroad and Atlanta, Birmingham & Atlantic Railway at Offerman, Thomasville, Tifton, and Waycross Ga.; also carload deliveries of Florida fruits and vegetables to A., B. & A. Railway at Offerman, Ga.*

I. C. C. Finance Docket No. 5470. Respondent's Exhibit No. 38. Witness: Davis.

	A. C. L. delivered to A., B. & A.		A. C. L. received from A., B. & A.	
	Competitive	Local	Competitive	Local
1906-07 (July 1st to June 30th)	10,634	9,501	17,575	1,778
1907-08 " "	5,395	8,531	7,292	1,673
1908-09 " "	18,257	9,853	18,531	4,537
1909-10 " "	38,145	11,349	44,780	4,073
1910-11 " "	59,732	9,527	86,594	6,369
1911-12 " "	85,210	9,679	128,157	11,139
1912-13 " "	66,689	8,052	130,245	12,939
1913-14 " "	57,230	8,707	97,504	13,040
1914-15 " "	51,819	5,730	114,571	8,109
1915-16 " "	53,627	5,971	134,265	9,985
1916-17 " "	69,122	8,367	159,739	9,362
1917 (Jan. 1st to Dec. 31st)	78,681	10,445	124,564	9,739
1918 (first four months)	32,014	7,502	40,381	4,422
1919	No record kept during Federal control			
1920 (last 10 months)	127,777	12,787	95,569	5,141
1921 (calendar year)	49,300	3,887	96,694	8,583
1922 " "	95,278	5,473	153,139	12,780
1923 " "	113,738	8,106	170,797	16,954
1924 " "	112,878	9,361	194,017	20,965
1925 " "	138,121	13,277	251,118	40,911

Explanation of terms "Competitive" and "Local"

A. C. L. delivered to A., B. & A.:

Competitive: Traffic originated or handled by A. C. L. when destined to competitive points on A., B. & A. or points beyond that line.

Local: Traffic originated or handled by A. C. L. when destined to local stations on A., B. & A.

A. C. L. received from A., B. & A.:

Competitive: Traffic originated or handled by A., B. & A. when destined to competitive points on A. C. L. or points beyond that line.

Local: Traffic originated or handled by A., B. & A. when destined to local stations on A. C. L.

Florida fruits and vegetables delivered A., B. & A. at Offerman

Season	Cars	Season	Cars
1912–13	724	1919–20	6, 136
1913–14	797	1920–21	2, 537
1914–15	767	1921–22	4, 005
1915–16	1, 323	1922–23	4, 946
1916–17	1, 531	1923–24	5, 159
1917–18	1, 400	1924–25	4, 518
1918–19	6, 643	1925–26	[1] 2, 025

Wilmington, N. C., May 17, 1926–h.

70–70A

Exhibit 43, filed pursuant to stipulation of counsel

Finance Dockets Nos. 5454 and 5470

Before the Interstate Commerce Commission

Application of Francis R. Hart, et al., as the reorganization committee on behalf of the Atlanta, Birmingham and Coast Railroad Company for authority to acquire and operate the Atlanta, Birmingham and Atlantic Railway and to issue securities.

Application of Atlantic Coast Line Railroad Company for authority to acquire control of the Atlanta, Birmingham and Coast Railroad Company by purchase of capital stock and to assume certain obligations.

STIPULATION

The undersigned counsel stipulate into the record in the above entitled proceedings the attached report of special master, dated June 2nnd, 1928, the attached petition for order dated June 22nd, 1926, and the attached order of court dated June 23rd, 1926.

STEPHEN E. YOUNG,
J. A. FOWLER, JR.,
Counsel for Francis R. Hart, et al.
GEO. B. ELLIOTT,
CARL N. DAVIS,
RON. C. ALTON.,
Counsel for Atlantic Coast Line Rd. Co.
CHAS. E. COTTERILL.
Counsel for Stockholders' Protective Committee.

Dated June 30th, 1926.

[1] To March 31st, 1926.

In the District Court of the United States for the Northern District of Georgia, Northern Division

BIRMINGHAM TRUST AND SAVINGS COMPANY, complainant, v. ATLANTA, BIRMINGHAM & ATLANTIC RAILway Company, defendant	Consolidated cause in equity No. 156

And the constituent causes in equity numbers 156, 188, 187, and 190

Petition for confirmation of sale

Your petitioners, George E. Roosevelt, and J. A. Fowler, jr., respectfully show to the court as follows:

1. At the adjourned sale held, pursuant to the provisions of the decree of foreclosure and sale dated April 30, 1926, heretofore made and entered by this court in the above-entitled causes, on June 22, 1926, by Albert G. Foster, Esq., the special master appointed in said decree of foreclosure and sale, your petitioners, as joint tenants and not as tenants in common, made a conditional bid for all the property in said decree of foreclosure and sale described and thereby directed to be sold, and said bid was the highest and best and only bid, all as more fully set forth in the special master's report of sale heretofore filed in said causes, to which report of sale your petitioners beg leave to refer with the same force and effect as if the same were set forth and pleaded at length herein.

2. The said property was so purchased by your petitioners acting as a purchasing committee on behalf of the reorganization committee constituted by the plan and agreement of reorganization dated February 23, 1926, for the reorganization of the Atlanta, Birmingham & Atlantic Railway Company. Said plan was approved by this court by order made and entered in the above-entitled consolidated cause of May 15, 1926.

The bid made by your petitioners was conditioned upon the approval of the Interstate Commerce Commission, said approval to take the form of the granting of two applications made by the reorganization committee on behalf of the New Company and Atlantic Coast Line Railroad Company, respectively, and now pending before the commission. Your petitioners believe that such condition is proper, due to the provision of the interstate commerce commission act, as amended by the transportation act of 1920. A public hearing has been held on these applications, and they have been set down for oral argument before division 4 of the commerce on July 14, 1926. Many public bodies and associations appeared at such hearing and wrote letters in support of the applications. The only contest to such applications that has developed is the contest made

by Charles E. Cotterill on behalf of stockholders, and it is believed that the contentions urged in support of such contest have been fully presented to and disposed of by this court.

The following principal amounts of bonds have been deposited under the plan and agreement of reorganization and are now represented by the above-mentioned reorganization committee:

$, principal amount of Atlantic & Birmingham first-mortgage bonds.

$, principal amount of Atlanta, Birmingham & Atlantic income bonds.

3. Your petitioners, as appears by said special master's report of sale, have heretofore deposited with and delivered to the special master the sum of fifty thousand dollars ($50,000) in certified check, endorsed payable to his order, and said certified check, if said bid be accepted and confirmed by this court, is, pursuant to the provisions of Article XX of said decree of foreclosure and sale, to be applied on account of the purchase price of the property sold to and purchased by your petitioners as aforesaid. Your petitioners, upon confirmation by this court of the sale to them of the said property, and upon the determination of the Interstate Commerce Commission granting the above-mentioned application, desire to make such further payment on account of the purchase price of said property as shall by order of this court be required to be made in advance of the delivery of the deed or instruments of conveyance and transfer by the special master. Your petitioners propose, subject to the approval of this court, to make such further payment in cash and in bonds and securities entitled under the provisions of said decree of foreclosure and sale to participate in the distribution of the proceeds of said sale by delivering to said special master:

(a) $ in cash.

(b) A certificate of the Farmers' Loan and Trust Company that it holds, subject to the order of the said special master, $, principal amount of the first-mortgage five per cent 5/30 gold coupon bonds, dated January 1, 1904, of Atlantic & Birmingham Railway Company, referred to in said decree of foreclosure and sale, in bearer form and accompanied by the coupon due July 1, 1921, and all subsequent coupons;

(c) A certificate of Old Colony Trust Company that it holds, subject to the order of the said special master $ principal amount of the first-mortgage five per cent 5/50 gold coupon bonds, dated January 1, 1904, of Atlantic & Birmingham Railway Company referred to in said decree of foreclosure and sale, in bearer form and accompanied by the coupon due July 1, 1921, and all subsequent coupons;

(d) A certificate of Irving Bank-Columbia Trust Company that it holds, subject to the order of the said special master, $ principal amount of the fifteen-year five per cent income mortgage gold bonds, dated as of November 1, 1915, of Atlanta, Birmingham &

Atlantic Railway Company, referred to in said decree of foreclosure and sale, in bearer form and accompanied by coupon No. 9 and all subsequent coupons, and $ principal amount of scrip certificates representing in equal face amount of said bonds.

Wherefore your petitioners pray:

First. That the special master's report of sale dated June 23, 1926, heretofore filed in the above-entitled causes, and all of the proceedings of the said special master as shown by his said report of sale and the exhibits attached thereto be in all respects approved, ratified, and confirmed;

Second. That the bid of your petitioners for the property described in said decree of foreclosure and sale and thereby directed to be sold be approved, ratified, and confirmed and made absolute and final, subject, however, to the condition expressed in the memorandum of receipt of said bid and to all the provisions and reservations of said decree of foreclosure and sale and to all the terms and conditions of sale therein set forth binding upon the purchasers of said property, and subject also to any and all orders which may be hereafter made by this court for the purpose of carrying such provisions and reservations into full affect or for the purpose of enabling the receiver in the above-entitled causes, or in any of them, to carry out his duties as such receiver or to protect such receiver in the carrying out of such duties;

Third. That the special master appointed in and by said decree of foreclosure and sale be authorized and directed to make, execute, acknowledge for record and deliver to your petitioners, or, at their election, to their assigns forthwith upon the delivery to him of the cash and certificates hereinbefore in subparagraphs (a), (b), (c), and (d) of paragraph 3 hereof referred to, or from time to time thereafter as your petitioners or their assigns may require, a deed substantially in the form of the deed hereto annexed, conveying, assigning, and transferring to your petitioners, or their assigns, the property sold to your petitioners as aforesaid, subject, however, to such equitable conditions as this court may impose, and with such exceptions therefrom as may be requested by your petitioners in conformity with the provisions of said decree of foreclosure and sale; and that the court may decree that no portion of the purchase price except as aforesaid is or will be required to be paid in advance of the delivery of the deed or other instruments of conveyance and transfer by the special master;

Fourth. That B. L. Bugg, as receiver, Atlanta, Birmingham & Atlantic Railway Company, Old Colony Trust Company, as trustee under the first mortgage, dated January 1, 1904, of Atlantic & Birmingham Railway Mortgage and Irving Bank-Columbia Trust Company, as trustee under the income mortgage dated as of November 1, 1915, of Atlanta, Birmingham & Atlantic Railway Company, and each of them, be directed to join and unite in the execution of such

deed, and that upon request of your petitioners such deed be delivered to your petitioners; and

Fifth. That your petitioners may have such other and further relief in the premises as may be proper and as the circumstances of the case may require.

Dated, June 22, 1926.

____ ____, ____ ____.
____ ____, ____ ____.

Solicitors.

70B In the District Court of the United States for the Northern District of Georgia, Northern Division

Birmingham Trust and Savings Company, complainant vs. Atlanta, Birmingham & Atlantic Railway Company, defendant	Consolidated cause in equity No. 156

And the constituent causes in equity numbers 156, 188, 187, and 190

Notice of filing special master's report of sale

Sirs: Please take notice that the attached is a true copy of the special master's report of sale which has this day been filed in the office of the clerk of the above-named court in the above-mentioned causes.

Albert G. Foster,
Special master.

June 22, 1926.

To—

King, Spalding, MacDougald & Sibley, Esqs., solicitors for Irving Bank-Columbia Trust Company, as trustee, and the Equitable Trust Company of New York, as trustee, Atlanta Trust Company Building, Atlanta, Georgia.

Slaton & Hopkins, Esqs., solicitors for Old Colony Trust Company, as trustee, Grant Building, Atlanta Georgia.

Reuben R. Arnold and Lowry Arnold, Esqs., solicitors for Birmingham Trust and Savings Company, #1338 Hurt Building, Atlanta, Georgia.

Brandon & Hynds, Esqs., solicitors for B. L. Bugg, as receiver, and for Atlanta, Birmingham & Atlantic Railway Company and for Atlantic & Birmingham Railway Company, Atlanta Trust Company Building, Atlanta, Georgia.

70C In the District Court of the United States for the Northern District of Georgia, Northern Division

BIRMINGHAM TRUST AND SAVINGS COMPANY, complainant vs. ATLANTA, BIRMINGHAM & ATLANTIC Railway Company, defendant	Consolidated cause in equity No. 156
BIRMINGHAM TRUST AND SAVINGS COMPANY, complainant vs. ATLANTA, BIRMINGHAM & ATLANTIC Railway Company, defendant	In equity No. 156
OLD COLONY TRUST COMPANY, Trustee, complainant vs. ATLANTIC & BIRMINGHAM RAILWAY Company, Atlanta, Birmingham & Atlantic Railway Company, Columbia Trust Company, Trustee, and The Equitable Trust Company of New York, Trustee, defendants	In equity No. 188
COLUMBIA TRUST COMPANY (NOW Irving Bank-Columbia Trust Company), Trustee, complainant vs. ATLANTA, BIRMINGHAM & ATLANTIC Railway Company, B. L. Bugg as Receiver of Atlanta, Birmingham and Atlantic Railway Company, Old Colony Trust Company, Trustee, and The Equitable Trust Company of New York, Trustee, defendants	In equity No. 187
THE EQUITABLE TRUST COMPANY OF NEW YORK, Trustee, complainant vs. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, B. L. Bugg as Receiver of Atlanta, Birmingham & Atlantic Railway Company, Birmingham Trust and Savings Company, Columbia Trust Company, Trustee, defendants	In equity No. 190

Special master's report of sale

To the honorable the Judge of the District Court of the United States for the Northern District of Georgia, Northern Division:

Albert G. Foster, the special master appointed by this honorable court by the decree of foreclosure and sale dated April 30, 1926, made and entered by this court in the above-mentioned causes, respectfully reports to the court as follows:

1. Neither Atlantic & Birmingham Railway Company nor Atlanta, Birmingham & Atlantic Railway Company nor any one on their behalf paid or caused to be paid the sums decreed by said decree of foreclosure and sale to be paid, or any part thereof, within ten days after the entry of said decree of foreclosure and sale or at any other time.

2. Pursuant to the provisions of said decree of foreclosure and sale (said decree, as your special master is informed and believes, having been adopted, rendered, and pronounced on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Georgia; on May 3, 1926, as the decree of the District Court of the United States for the Middle District of Alabama; on May 5, 1926, as the decree of the District Court of the United States for the Northern District of Alabama; and on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Florida), your special master fixed June 16, 1926, as the day and 11 o'clock in the forenoon central time as the hour for the sale of the property in said decree of foreclosure and sale described and thereby directed to be sold. Notice of the time and place of said sale, containing the brief description of the property to be sold set out in Article XIX of the decree of foreclosure and sale and referring to said decree for further particulars, and containing all other matters required by said decree of foreclosure and sale to be contained in said notice, as required by said decree, was published twice in each week for six consecutive weeks prior to said sale in the Atlanta Constitution, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Atlanta, Georgia, and in the county of Fulton, Georgia, and in the New York Evening Post, a daily newspaper printed, published, regularly issued, and having a general circulation in the borough of Manhattan, city of New York, New York, and once a week for at least four successive weeks prior to said sale in the Waycross Journal, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Waycross, Georgia, and in the county of Ware, Georgia, and in the Boston Evening Transcript, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Boston, Massachusetts. Publication of said notice was made as aforesaid in said newspapers respectively on the following dates, to wit:

(a) In the Atlanta Constitution on May 4, 7, 11, 14, 18, 21, 25, and 28 and June 1, 4, 8, and 11, 1926.

(b) In the New York Evening Post on May 4, 7, 11, 14, 18, 21, 25, and 28 and June 1, 4, 8, and 11, 1926.

(c) In the Waycross Journal on May 18 and 25 and June 1 and 8, 1926.

(d) In the Boston Evening Transcript on May 18 and 25 and June 1 and 8, 1926.

Copies of the said notice with proper affidavits as to the publication thereof on the aforesaid dates in the said newspapers, respectively, have heretofore been filed in said consolidated cause, and reference is hereby made thereto. A copy of the said notice as published in the Atlanta Constitution is attached hereto marked "Exhibit A."

3. In pursuance of said decree of foreclosure and sale, B. L. Bugg, receiver of Atlanta, Birmingham & Atlantic Railway Company, not more than twenty (20) days nor less than five (5) days prior to the date fixed by your special master for the sale of the property by said decree directed to be sold, filed with the clerk of this court a statement showing as definitely as practicable—

(a) All taxes and assessments levied against the property by said decree directed to be sold, or any part thereof, then remaining unpaid;

(b) All indebtedness, obligations, and liabilities contracted or incurred by said receiver then remaining unpaid, other than counsel fees;

(c) All unpaid claims against said Atlanta, Birmingham and Atlantic Railway Company, which so far as said receiver is informed are claimed to be prior in lien or superior in equity to the first-mortgage five per cent 5/30 gold coupon bonds, dated January 1, 1904, of Atlantic & Birmingham Railway Company, and/or the fifteen-year five per cent income mortgage gold bonds, dated as of November 1, 1915, of Atlanta, Birmingham & Atlantic Railway Company;

(d) All outstanding contracts and leases to which said Atlantic & Birmingham Railway Company and said Atlanta, Birmingham & Atlantic Railway Company or said receiver may be parties, stating in the case of contracts or leases to which said Atlantic & Birmingham Railway Company and said Atlanta, Birmingham & Atlantic Railway Company are parties, whether said contracts or leases have been adopted or disaffirmed by said receivers;

(e) All cash and investments of cash in the possession or under the control of said receiver and all moneys owing to him.

4. Under and by virtue of and in all respects in accordance with the provisions of said decree of foreclosure and sale and said notice of sale, and on the day and at the hour specified in said notice your special master attended upon the premises at the Haynes Street freight station of said Atlanta, Birmingham & Atlantic Railway Company near the intersection of Haynes Street and Hunter Street, in the city of Atlanta, county of Fulton, and State of Georgia, and,

having theretofore received the joint request of the solicitors for Old Colony Trust Company, trustee, and Irving Bank-Columbia Trust Company, trustee, for the adjournment of said sale to the day and hour hereinafter mentioned, duly adjourned and postponed said sale to Tuesday, June 22, 1926, at 11 o'clock in the forenoon, central time, by oral announcement made personally by your special master at the time and place fixed for such sale as aforesaid.

5. Under and by virtue of and in all respects in accordance with the provisions of said decree of foreclosure and sale and said notice of sale and on the day and at the hour to wh[redacted]e said sale had been adjourned as aforesaid—to wit, on T[redacted] June 22, 1926, at 11 o'clock in the forenoon, central time, your special master attended upon the premises at the Haynes Street freight station of said Atlanta, Birmingham & Atlantic Railway Company near the intersection of Haynes Street and Hunter Street, in the city of Atlanta, county of Fulton and State of Georgia, and, in strict conformity to said decree of foreclosure and sale and said notice of sale and upon the terms and conditions therein contained, duly offered for sale at public auction without valuation, appraisal, redemption, or extension and free from any right of redemption, to the highest bidder or bidders, the property in said decree of foreclosure and sale described and thereby directed to be sold.

6. The following persons had duly qualified as bidders at said sale pursuant to the provisions of Article XX of said decree of foreclosure and sale by depositing with and delivering to your special master at least twenty-four hours prior to the offering by your special master of the said property for sale, as a pledge they would make good their bid in event of its acceptance, the certified check hereinafter specified, to wit:

George E. Roosevelt and J. A. Fowler, jr., by depositing and delivering to your special master the sum of fifty thousand dollars ($50,000) in a certified check on Irving Bank-Columbia Trust Company, said trust company being acceptable to your special master and said check being endorsed payable to the order of your special master.

No other person or persons qualified to bid at said sale.

7. Your special master thereupon read said notice of sale and invited bids for said property. The highest and best and only bid for said property when offered for sale as aforesaid was made by said George E. Roosevelt and J. A. Fowler, jr., who bid for the said property the sum of $4,500,000, such bid being made upon a certain condition appearing from the memorandum of the receipt thereof hereto attached, marked "Exhibit B," which memorandum was made and signed at the conclusion of said bidding.

8. At the conclusion of said bidding at said adjourned sale on said June 22, 1926, the undersigned special master announced that, in pursuance of the provisions of said decree of foreclosure and sale and as stated in said notice of sale, the special master's report of sale would be made to this court and the hearing thereon held at the

courtroom of the United States District Court for the Northern District of Georgia, Northern Division, in the city of Atlanta, State of Georgia, on June 23, 1926, at ten o'clock in the forenoon, central time, for such orders, judgments, and decrees in the premises as this court might deem proper.

9. The undersigned special master respectfully reports said bid received by him as aforesaid and recommends that said bid be accepted and confirmed by the court.

Dated, June 22, 1926.

Respectfully submitted,

ALBERT G. FOSTER,
Special Master as Aforesaid.

[Exhibit B—Memorandum of receipt of bid]

This memorandum, made this 22nd day of June, 1926, witnesseth that:

(1) At an adjourned sale held on this 22nd day of June, 1926, by the undersigned special master, pursuant to a decree of foreclosure and sale, dated April 30, 1926, made by the District Court of the United States for the Northern District of Georgia, Northern Division, in the equity cause therein pending, entitled "Birmingham Trust and Savings Company, complainant, v. Atlanta, Birmingham & Atlantic Railway Company, defendant, consolidated cause in equity No. 156," and the constituent causes in equity Nos. 156, 188, 187, and 190, George E. Roosevelt and J. A. Fowler, jr., bid for the property in said decree of foreclosure and sale described and thereby directed to be sold, the sum of four million five hundred thousand ($4,500,000) dollars, and were the highest and best and only bidders for the said property; provided, however, that said bid was and is made subject to the condition that it shall be and become final, effective, and binding only in the event that the Interstate Commerce Commission shall, within a time which, in the opinion of the said court, is reasonable, make an order or orders pursuant to the application on behalf of the Atlanta, Birmingham and Coast Railroad Company (I. C. C. Finance Docket 5454), and in the application of the Atlantic Coast Line Railroad Company (I. C. C. Finance Docket 5470), conferring authority sought in said applications substantially sufficient to enable the parties thereto to carry out the plan and agreement of reorganization therein set out and heretofore submitted to and approved by the said United States District Court for the Northern District of Georgia, Northern Division, and upon the further condition that in the event said commission refuses the authority sought in said applications or does not enter an order granting the same within a time which, in the opinion of said court, is reasonable, then said bidders may, at their option, withdraw their bid and receive their qualifying deposit; and that in no event shall said bidders be required to accept any conveyance of the property sold, or make any payment under their bid, or said decree of fore-

closure and sale, unless and until the said Interstate Commerce Commission shall have granted the authority sought in said applications in the manner aforesaid.

(2) The undersigned special master has received said bid subject to confirmation by said court and subject to the terms and conditions of said decree of foreclosure and sale and of the notice of sale signed by the undersigned special master and dated May 4, 1926, and will report said bid to said court as provided in said decree of foreclosure and sale.

ALBERT G. FOSTER,
As Special Master as Aforesaid.
GEORGE E. ROOSEVELT,
J. A. FOWLER, Jr.,
Purchasers.

70D In the District Court of the United States for the Northern District of Georgia, Atlanta Division

BIRMINGHAM TRUST AND SAVINGS COMPANY, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, defendant	Consolidated cause in equity, No. 156
BIRMINGHAM TRUST AND SAVINGS COMPANY, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, defendant	In equity, No. 156
OLD COLONY TRUST COMPANY, TRUSTEE, Complainant v. ATLANTIC & BIRMINGHAM RAILWAY COMPANY, Atlanta, Birmingham & Atlantic Railway Company, Columbia Trust Company, Trustee, and The Equitable Trust Company of New York, Trustee, defendants	In equity, No. 188
COLUMBIA TRUST COMPANY (NOW IRVING Bank-Columbia Trust Company), Trustee, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, B. L. Bugg as Receiver of Atlanta, Birmingham and Atlantic Railway Company, Old Colony Trust Company, Trustee, and the Equitable Trust Company of New York, Trustee, defendants	In equity, No. 187

THE EQUITABLE TRUST COMPANY OF NEW York, Trustee, complainant v. ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company, B. L. Bugg as Receiver of Atlanta, Birmingham & Atlantic Railway Company, Birmingham Trust and Savings Company, Columbia Trust Company, Trustee, defendants	In equity, No. 190

Decree of confirmation of sale

The above-entitled causes and each of them came on to be heard at this term and were argued by counsel and submitted to the court, and the court, being fully advised in the premises, upon consideration thereof finds, orders, adjudges, and decrees as follows:

I. Neither the defendant, Atlanta, & Birmingham Railway Company, nor any one on its behalf, has paid or caused to be paid to the Old Colony Trust Company, trustee, within the time specified in Article XVI of the decree of foreclosure and sale in the above-entitled causes dated April 30, 1926, and duly filed on May 1, 1926, in the office of the clerk of this court (said decree being hereinafter called the decree of foreclosure and sale), all or any part of the sum decreed by said Article XVI to be paid to said Old Colony Trust Company, trustee, by said defendant, Atlantic & Birmingham Railway Company, or by some one on its behalf, nor has all or any part of said sum been paid at any time.

II. Neither the defendant, Atlanta, Birmingham & Atlantic Railway Company, nor anyone on its behalf, has paid or caused to be paid to Irving Bank-Columbia Trust Company, trustee, within the time specified in Article XVI of the decree of foreclosure and sale in the above-entitled causes, all or any part of the sum decreed by said Article XVI to be paid to said Irving Bank-Columbia Trust Company, trustee, by said Atlanta, Birmingham & Atlantic Railway Company, or by some one on its behalf, nor has all or any part of said sum been paid at any time.

III. Albert G. Foster, Esq., the special master appointed in and by the decree of foreclosure and sale in the above-entitled causes, has fully complied in all respects with all the directions in the decree of foreclosure and sale contained as to the sale of the property in Article XXXII thereof described and by said decree of foreclosure and sale directed to be sold.

IV. The real estate offered for sale by the special master pursuant to the decree of foreclosure and sale is situated in more than one county or State, the same being situated, among other counties, in the counties of Fulton and Ware, in the State of Georgia; the Atlanta Constitution, in which newspaper, among others, notice of the sale of the said real estate was in and by the decree of foreclosure and

sale directed to be published and in which, among other newspapers, the said notice was published as appears by the special master's report of sale hereinafter referred to, was and is a newspaper printed, regularly issued, and having a general circulation in the county of Fulton and State of Georgia; and the Waycross Journal, in which newspaper, among others, the notice of the said sale was in and by the decree of foreclosure and sale directed to be published and in which, among other newspapers, the said notice was published, as appears by the special master's report of sale hereinafter referred to, was and is a newspaper printed, regularly issued, and having a general circulation in the county of Ware, in the State of Georgia.

V. The report dated June 22, 1926, of the said Albert G. Foster, Esq., the special master appointed in and by the decree of foreclosure and sale in the above-entitled causes, and all of the proceedings of the said special master as shown by his said report of sale and the exhibits attached thereto or filed therewith, are in all respects approved, ratified, and confirmed.

VI. At the adjourned sale held on Tuesday, June 22, 1926, by the said special master pursuant to the decree of foreclosure and sale (said decree having been adopted, rendered, and pronounced on May 3, 1926, as the decree of the district court of the United States for the Southern District of Georgia, on May 3, 1926; as the decree of the District Court of the United States for the Middle District of Alabama, on May 5, 1926; as the decree of the District Court of the United States for the Northern District of Alabama; and on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Florida), the highest and best and only bidders for the property and assets described in the decree of foreclosure and sale and thereby directed to be sold, were George E. Roosevelt and J. A. Fowler, jr. (hereinafter called the purchasers), acting as a purchasing committee on behalf of Francis R. Hart, George E. Warren, James H. Perkins, and George E. Roosevelt, as the reorganization committee under the plan and agreement of reorganization, dated February 23, 1926, for the reorganization of Atlanta, Birmingham & Atlantic Railway Company, a copy of which plan and agreement of reorganization has been filed in said consolidated cause, who bid for said property and assets the sum of $4,500,000. The purchasers had previously duly qualified as bidders at said sale in the manner provided in Article XX of the decree of foreclosure and sale. Said bid was made subject to the following condition, to wit:

"That it shall be and become final, effective, and binding only in the event that the Interstate Commerce Commission shall, within a time which, in the opinion of the said court, is reasonable, make an order or orders pursuant to the application on behalf of the Atlanta, Birmingham and Coast Railroad Company (I. C. C. Finance

Docket 5454), and in the application of the Atlantic Coast Line Railroad Company (I. C. C. Finance Docket 5470), conferring authority sought in said applications substantially sufficient to enable the parties thereto to carry out the plan and agreement of reorganization therein set out, and heretofore submitted to and approved by the said United States District Court for the Northern District of Georgia, Northern Division, and upon the further condition that in the event said commission refuses the authority sought in said applications, or does not enter an order granting the same within a time which, in the opinion of said court, is reasonable, then said bidders may, at their option, withdraw their bid and receive their qualfying deposit; and that in no event shall said bidders be required to accept any conveyance of the property sold, or make any payment under their bid, or said decree of foreclosure and sale, unless and until the said Interstate Commerce Commission shall have granted the authority sought in said applications in the manner aforesaid."

VII. The dividends upon the preferred stock to be issued under said plan and agreement of reorganization to the bondholders are to accrue from one year after the date on which possession of the properties shall be vested in the New Company, and deferring such date means substantial loss to said bondholders. There is a large amount of taxes due and owing to States, counties, municipalities, and school districts. Such States and subdivisions thereof are in great need of the moneys due, and the withholding of these moneys from such States and subdivisions any longer than is necessary not only creates hardship but is not justified.

VIII. Said bid of the purchasers for the property described in Article XXXII of the decree of foreclosure and sale and by said decree of foreclosure and sale directed to be sold is in all respects accepted, approved, ratified, and confirmed absolutely and finally, subject, however, to the condition expressed in the memorandum of receipt of said bid, as hereinbefore set out, a copy of said memorandum being attached to said special master's report of sale and subject to all the provisions, reservations, terms, and conditions of the decree of foreclosure and sale which are binding upon the purchasers of said property, and subject also to any and all orders which may be hereafter made by this court for the purpose of carrying such provisions, reservations, terms, and conditions into full effect, or for the purpose of enabling the receiver in the above-entitled causes, or any of them, to carry out his duties as such receiver or to protect such receiver in the carrying out of such duties.

With the purchasers' assent, this court hereby reserves jurisdiction, without regard to the elapsing of terms, to do the following things:

In the event the Interstate Commerce Commission shall fail or refuse to enter the orders or to grant the permission substantially as sought in the aforementioned applications, within a time which,

in the opinion of this court, is reasonable, to make and enforce an order directing that the said bid be withdrawn and that the special master return to the purchasers their qualifying deposits, and as well to make any other orders, judgments, or decrees in the premises modifying this decree of confirmation or entirely cancelling the same, as may then appear to be just.

The foregoing retention of jurisdiction does not affect the right of the purchasers to withdraw their bid and receive back their qualifying deposit as expressed in their said memorandum of bid.

IX. The purchasers have heretofore deposited with and delivered to the special master on account of the purchase price of the said property the sum of fifty thousand dollars ($50,000) in a certified check endorsed payable to the order of the special master. The special master is hereby directed, upon the happening of the condition above referred to, to credit the purchasers with said sum upon the purchase price of the property sold to them, in accordance with the provisions of the decree of foreclosure and sale.

X. Upon the delivery to the special master of

(a) A certificate of the Farmers' Loan and Trust Company that it holds, subject to the order of the special master, $2,770,000 principal amount of the first-mortgage five per cent 5/30 gold coupon bonds, dated January 1, 1904, of Atlantic & Birmingham Railway Company referred to in said decree of foreclosure and sale, in bearer form and accompanied by the coupon due July 1, 1921, and all subsequent coupons;

(b) A certificate of Old Colony Trust Company that it holds subject to the order of said special master, $1,104,000 principal amount of the first-mortgage five per cent 5/30 gold coupon bonds, dated January 1, 1904, of Atlantic & Birmingham Railway Company referred to in said decree of foreclosure and sale, in bearer form and accompanied by the coupon due July 1, 1921, and all subsequent coupons;

(c) A certificate of Irving Bank-Columbia Trust Company that it holds subject to the order of said special master, $4,332,000 principal amount of the fifteen-year five per cent income mortgage gold bonds, dated as of November 1, 1915, of Atlanta, Birmingham & Atlantic Railway Company referred to in said decree of foreclosure and sale, in bearer form and accompanied by coupon No. 9 and all subsequent coupons;

the special master shall, subject to the further provisions of this decree of confirmation and sale forthwith or from time to time thereafter, when as the purchasers or their assigns may require, duly make, execute, acknowledge for record, and deliver to the purchaser, or at their written election to their assigns, a deed or deeds or other proper instruments conveying, assigning, and transferring to the purchasers or their assigns the property sold to such purchasers as aforesaid, with such exceptions from said property as may be requested by the purchasers or their assigns in conformity

with the provisions of said decree of foreclosure and sale; and no portion of the purchase price except as aforesaid is or will be required to be paid in advance of the delivery of the deed or other instruments of conveyance and transfer by the special master.

XI. The Atlanta, Birmingham & Atlantic Railway Company and B. L. Bugg as receiver in the above-entitled causes, and each of them, shall, as provided in Article XXVIII of the decree of foreclosure and sale, join with the special master in the execution of the deed or deeds or instruments of conveyance, assignment, and transfer to be made by the special master; Old Colony Trust Company, as trustee, and Irving Bank-Columbia Trust Company, as trustee, shall respectively release, by joining in said deed or deeds or instrument or instruments of conveyance, assignment and transfer to be made by the special master, all their respective right, title, and interest as trustee under the first mortgage and as trustee under the income mortgage, respectively, of, in, and to the property so conveyed, assigned, or transferred by the special master. B. L. Bugg, as receiver in the above-entitled cause, is authorized and directed upon request from the purchasers or their assigns, after the delivery of a deed as aforesaid, to deliver possession of all property and/or other assets by such deed conveyed to the grantees therein or their assigns.

XII. The deed to be made by the special master shall for all purposes be held to be valid and sufficient and to be the deed or deeds or instruments of conveyance, assignment, and transfer, the making, execution, acknowledgement for record, and delivery of which is authorized and directed by the provisions of this decree of confirmation of sale, if the same is substantially in the form hereto annexed, marked Exhibit A, with such changes therein or omissions therefrom not inconsistent with the provisions of the decree of confirmation of sale or with the provisions of the decree of foreclosure and sale, as may be necessary or appropriate and as may be approved by this court, the approval by this court of such changes and/or omissions to be evidenced by the approval of this court of the form of such deed, such approval to be noted on such deed.

XIII. All matters not by the decree of foreclosure and sale or by this decree of confirmation of sale determined are reserved by this court for further determination. Any party to the above-entitled causes or any of them, or any claimant or other person whose rights are affected or determined by any of the provisions of this decree of confirmation of sale, or the said purchasers, or their assigns, may at any time apply to this court for further order and direction touching matters hereby reserved for determination by the court, and jurisdiction of the above-entitled causes and each of them and of the subject matter of the decree of foreclosure and sale and of this decree of confirmation of sale is retained until the complete execution of the provisions of the decree of foreclosure and sale and of this decree of confirmation of sale and until after the

final disposition of all matters therein or herein reserved for further determination by this court.

XIV. The June, 1926, equity term of this court is extended until after the complete execution of the provisions of the decree of foreclosure and sale and of this decree, and until after the final determination and disposition of all matters herein reserved for future determination or action by this court, and said equity term is extended in any event for a period of one year from the date of this decree with leave to any party to the above-entitled causes, or any of them (including the purchasers or their assigns), at any time prior to the expiration of said period of one year to apply to this court for a further extension of said term.

Dated, June 23rd, 1926.

S. H. SIBLEY (copy),
United States District Judge.

We consent.
J. A. FOWLER, Jr.,
GEO. E. ROOSEVELT.

[Exhibit A]

(As attached to decree of confirmation of sale dated June 23, 1926.)
(Proof No. 2, June 18, 1926.)

Albert G. Foster, special master, Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg receiver; Old Colony Trust Company, trustee; Irving Bank-Columbia Trust Company, trustee, to George E. Roosevelt and J. A. Fowler, jr.

DEED

Under decree of foreclosure and sale of the District Court of the United States for the Northern District of Georgia, Northern Division, dated April 30, 1926.

THIS INDENTURE, made this day of , 1926, between Albert G. Foster, residing at Madison, county of Morgan, and State of Georgia, as special master (herein sometimes called the special master), appointed to act and acting as such under the decree of foreclosure and sale, dated April 30, 1926, hereinafter described, party of the first part;

Atlanta, Birmingham & Atlantic Railway Company, a railroad corporation organized and existing under the laws of the State of Georgia, having its office and principal place of business in the city of Atlanta, county of Fulton, and State of Georgia (herein sometimes called the Railway Company), party of the second part;

B. L. Bugg, residing at Atlanta, in the county of Fulton, and State of Georgia, as receiver of the Railway Company and of all its property and assets, appointed and acting under orders duly made and filed in the consolidated cause and in the constituent causes hereinafter mentioned (herein sometimes called the receiver), party of the third part;

Old Colony Trust Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its office and principal place of business at No. 17 Court Street, in the city of Boston, county of Suffolk, and Commonwealth of Massachusetts, as trustee under the first mortgage or deed of trust dated January 1, 1904, and the supplemental mortgage or deed of trust dated September 3, 1904, of the Atlantic & Birmingham Railway Company, a railroad corporation organized under the laws of the State of Georgia, which first mortgage and supplemental mortgage are more fully described in the decree of foreclosure and sale, and, unless the context otherwise indicates, are herein collectively called the first mortgage, party of the fourth part;

Irving Bank-Columbia Trust Company (formerly known as Columbia Trust Company, its name having been changed to Irving Bank-Columbia Trust Company pursuant to the merger of the Irving National Bank into it, but its corporate existence not having been changed by such merger), a corporation organized and existing under the laws of the State of New York, having its office and principal place of business at No. 60 Broadway, in the Borough of Manhattan, city, county, and State of New York, as trustee under the fifteen-year five per cent income mortgage and deed of trust of the Railway Company, dated as of November 1, 1915 (hereinafter called the income mortgage), party of the fifth part; and

George E. Roosevelt, residing at No. . Street, in the Borough of Manhattan, city, county, and State of New York, and J. A. Fowler, Jr., residing in the village of Bayside, county of Queens, State of New York (hereinafter called the purchasers), parties of the sixth part.

Whereas, in and by a certain decree of foreclosure and sale dated April 30, 1926, made by the District Court of the United States for the Northern District of Georgia, Northern Division, and filed on May 1st, 1926, in the office of the clerk of said court (said decree being herein called the decree of foreclosure and sale) in a certain consolidated cause then pending in said court and entitled "Birmingham Trust and Savings Company, Complainant, vs. Atlanta, Birmingham & Atlantic Railway Company, defendant, consolidated cause, in equity, No. 156," and also filed in the several constituent causes numbered, respectively, 156, 188, 187, and 190, all in equity, consolidated into said consolidated cause, it was, among other things, ordered, adjudged, and decreed that all the property and assets of every kind and character of the Railway Company and/or of the receiver described in Article XXXII of the decree of foreclosure and sale should be sold in the manner and subject to the provisions in the decree of foreclosure and sale set forth, and that said sale should be made by and under the direction of Albert G. Foster, Esq., who was by the decree of foreclosure and sale appointed special master for that purpose, at public auction upon the premises at the Haynes Street freight station of the Railway Company, near the

intersection of Haynes Street and Hunter Street, in the city of Atlanta, in the county of Fulton and State of Georgia, on a day and at an hour to be fixed by the special master, and that notice of the time and place of said sale, describing briefly the property to be sold and referring to the decree of foreclosure and sale for further particulars, should be published twice in each week for six consecutive weeks prior to said sale in the Atlanta Constitution, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Atlanta, Georgia, and in the New York Evening Post, a daily newspaper printed, published, regularly issued, and having a general circulation in the Borough of Manhattan, city, county, and State of New York, and once a week for at least four successive weeks prior to said sale in the Waycross Journal, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Waycross, Georgia, and in the Boston Evening Transcript, a daily newspaper printed, published, regularly issued, and having a general circulation in the city of Boston, Massachusetts; and

Whereas the decree of foreclosure and sale was thereafter adopted, rendered, and pronounced on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Georgia; on May 3, 1926, as the decree of the District Court of the United States for the Middle District of Alabama; on May 5, 1926, as the decree of the District Court of the United States for the Northern District of Alabama; and on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Florida, in the proceedings ancillary to the said consolidated cause and/or the said constituent causes pending, respectively, in said District Courts of the United States; and

Whereas by the decree of foreclosure and sale, it was, among other things, ordered, adjudged and decreed that said Atlantic & Birmingham Railway Company, or someone on its behalf, within ten days after the entry of said decree should pay or cause to be paid to the said Old Colony Trust Company, trustee, the sums specified in Article XVI of the decree of foreclosure and sale to be paid to said Old Colony Trust Company, trustee; and

Whereas neither said Atlantic & Birmingham Railway Company, nor anyone on its behalf, nor anyone else, did within ten days after the entry of the decree of foreclosure and sale, or at any other time, pay or cause to be paid to the said Old Colony Trust Company, Trustee, the said sums by the decree of foreclosure and sale directed to be paid to it, or any part of said sums, or any thereof; and

Whereas by the decree of foreclosure and sale, it was among other things, further ordered, adjudged and decreed that said Atlanta, Birmingham & Atlantic Railway Company, or some one on its behalf, within ten days after the entry of said decree should pay or cause to be paid to the said Irving Bank-Columbia Trust Company, trustee, the sums specified in Article XVI of the decree of foreclosure and sale to be paid to said Irving Bank-Columbia Trust Company, trustee; and

Whereas neither the said Atlanta, Birmingham & Atlantic Railway Company, nor anyone on its behalf, nor anyone else, did within ten days after the entry of the decree of foreclosure and sale, or at any other time, pay or cause to be paid to the said Irving Bank-Columbia Trust Company, trustee, the said sums by the decree of foreclosure and sale directed to be paid to it, or any part of said sums, or any thereof; and

Whereas June 16, 1926, at 11.00 o'clock in the forenoon, central time, was duly fixed by the special master as the day and hour for the said sale, and notice of the time and place of said sale describing briefly the property to be sold and referring to the decree of foreclosure and sale for further particulars was duly published, all in accordance with the provisions of the said decree of foreclosure and sale and in accordance with law; and

Whereas the special master, by oral announcement duly made personally by him on June 16, 1926, at 11.00 o'clock in the forenoon, central time, upon the premises at the Haynes Street freight station of the Railway Company, near the intersection of Haynes Street and Hunter Street, in the city of Atlanta, in the county of Fulton and State of Georgia, being the time and place fixed for such sale, did duly adjourn or postpone the said sale to Tuesday, June 22, 1926, at 11.00 o'clock in the forenoon, central time, all in accordance with and as authorized by the provisions of the decree of foreclosure and sale; and

Whereas the special master on Tuesday, June 22, 1926, at 11.00 o'clock in the forenoon, central time, upon the premises at the Haynes Street freight station of the Railway Company, near the intersection of Haynes Street and Hunter Street, in the city of Atlanta, county of Fulton, and State of Georgia, being the place fixed for said sale and the time to which the same was adjourned or postponed as aforesaid, pursuant to and in all respects in accordance with the provisions of the decree of foreclosure and sale, sold at public auction the property and assets described in Article XXXII of the decree of foreclosure and sale and by said decree directed to be sold, and received the bid of the purchasers in the sum of $———, said bid being the highest, best, and only bid for said property and assets and the purchasers having previously duly qualified as bidders at said sale in the manner provided in Article XX of the decree of foreclosure and sale; and

Whereas on Wednesday, June 23, 1926, being the day following the conclusion of the bidding at said adjourned sale, at ten o'clock in the forenoon, the special master duly made his report in respect of said sale to the District Court of the United States for the Northern District of Georgia, Northern Division, at the courtroom of said court, in the city of Atlanta, State of Georgia, and said report was duly filed in the office of the clerk of said court; and

Whereas pursuant to the provisions of Article XIX of the decree of foreclosure and sale, the above-mentioned consolidated cause and the constituent causes and each of them, and the matter of said sale

as reported by the special master, duly came on to be heard before said court, and thereupon by a decree of confirmation of sale, dated June —, 1926, and duly filed on the same date in the office of the clerk of said court, said special master's report of sale and all of the proceedings of the said special master as shown by his said report of sale and the exhibits attached thereto or filed therewith were by said court in all respects ratified, approved, and confirmed and said bid of the purchasers for said property and assets was accepted, approved, ratified, and confirmed and was made absolute and final; and

Whereas in and by Article XXVIII of the decree of foreclosure and sale it was directed that upon confirmation of the sale and upon payment by any purchaser, or his assigns, of the purchase price or such portion thereof as should pursuant to the provisions of the decree of foreclosure and sale be required to be paid in advance of the delivery of the deed or other instruments of conveyance and transfer by the special master, or upon the making by such purchaser or his assigns of such provision for the payment thereof as said court should approve, the special master should execute and deliver a deed or deeds or other proper instruments conveying, assigning, and transferring to such purchaser or his assigns the property sold to such purchaser, subject, however, to the other provisions of said article, and that the Railway Company should at the time of the execution of any deed or deeds or instruments of conveyance, assignment, and transfer by the special master, by way of further assurance, make and deliver a similar deed or deeds or other instruments of conveyance, assignment, and transfer to the grantee or grantees in such deed or instruments of conveyance of the special master, or if any such purchaser, or his assigns, should so request, should join with the special master in the execution of the deed or deeds or instruments of conveyance, assignment, and transfer to be made by the special master; and that the receiver should also at the time of the delivery of any deed or deeds or instruments of conveyance, transfer, and assignment by the special master, make and deliver to the grantee or grantees in such deed or deeds or other instrument or instruments of conveyance of the special master a sufficient deed or deeds or other instruments of conveyance, assignment, and transfer, or if any such purchaser, or his assigns, should so request, should join with the special master in the execution of the deed or deeds or instruments of conveyance, assignment, and transfer to be made by the special master; and that said Old Colony Trust Company, as trustee, at the time of the execution of the deed or deeds or other instruments of conveyance, assignment, or transfer thereof by the special master should release by a proper instrument to the grantee or grantees in such deed or deeds or other instrument or instruments of conveyance of the special master all its right, title, and interest, as trustee under the first mortgage, of, in, and to the property so conveyed, assigned, or transferred by the special master; and that said Irving Bank-Columbia Trust Company, as trustee, at the

time of the execution of the deed or deeds or other instruments of conveyance, assignment, or transfer thereof by the special master, should release by a proper instrument to the grantee or grantees in such deed or deeds or other instrument or instruments of conveyance of the special master all its right, title, and interest as trustee under the income mortgage of, in, and to the property so conveyed, assigned, or transferred by the special master; and

Whereas, the purchasers have paid or made provision, approved by said court, for the payment of such portion of the purchase price of said property and assets as has been required by said court to be paid in advance of the delivery of the deed or other instruments of conveyance by the special master and have requested the special master to execute and deliver a deed in the form of this indenture, and have also requested the Railway Company, the receiver, said Old Colony Trust Company, as trustee as aforesaid, and said Irving Bank-Columbia Trust Company, as trustee as aforesaid, to join with the special master in the execution of this indenture; and the form of this indenture has been duly approved by said court and the conveyance of said property and assets by this indenture has been duly ordered by said court by said decree of confirmation of sale, all in accordance with the provisions of the decree of foreclosure and sale.

Now therefore this indenture witnesseth:

I

That said Albert G. Foster, as special master as aforesaid, party of the first part, in order to carry into effect the sale made by him pursuant to the decree of foreclosure and sale, and in consideration of the payment by the purchasers of such portion of the purchase price of the said property and assets as has been required by said court to be paid in advance of the delivery of this indenture, the receipt whereof is hereby acknowledged, and in accordance with the provisions of the decree of foreclosure and sale and said decree of confirmation of sale of said court, and pursuant to the terms and provisions thereof, without any covenant or warranty, express or implied, has granted, bargained, sold, assigned, transferred, and conveyed and by these presents does grant, bargain, sell, assign, transfer, and convey unto the purchasers, parties of the sixth part, and their heirs, executors, administrators, and assigns forever the property and assets hereinafter in this indenture described;

To have and to hold all and singular the said property and assets, both real and personal, hereinafter described, and hereby granted, bargained, sold, assigned, transferred, and conveyed, or intended so to be, and every part and parcel thereof, unto the purchasers and their heirs, executors, administrators, and assigns, to their and each of their own proper use, benefit, and behoof forever, free from any right of redemption and from any charge or claim in respect to any indebtedness of the Railway Company, or of the receiver, other than

charges and claims expressly subject to which the said property and assets were sold under the decree of foreclosure and sale, and free from the trust and lien, if any, imposed thereon by said first mortgage and said supplemental mortgage of said Atlantic & Birmingham Railway Company, free from the trust and lien, if any, imposed thereon by said income mortgage, and free from all claims, rights, interests, or equity of redemption of, in, or to the same by or of the Railway Company, its successors and assigns, and by or of said Atlantic & Birmingham Railway Company, its successors and assigns, and by or of the creditors and stockholders of the Railway Company or said Atlantic & Birmingham Railway Company, and by or of all persons claiming by, under or through the Railway Company or said Atlantic & Birmingham Railway Company, their creditors or their stockholders, and by or of all parties (as said term is defined in the decree of foreclosure and sale) to the above-mentioned causes or any of them, and by or of all persons claiming under them, or any of them, excepting always the trustee under the first and refunding mortgage dated November 1, 1915, of the Railway Company;

Subject, however, to the liens and conditions specified in Article XXVI of the decree of foreclosure and sale to the extent specified in said Article XXVI, and to each and all of the terms, provisions, and conditions of the decree of foreclosure and sale, which are hereby specifically accepted by the purchasers for themselves, their heirs, executors, administrators, and assigns, and without limiting the generality of the foregoing language, subject to the right reserved by said court in and by Article XXI of the decree of foreclosure and sale to retake and resell the said property and assets, in case the purchasers shall fail or omit to make any payment on account of the unpaid balance of the purchase price within twenty days after the entry of the order requiring such payment or, if an appeal be taken from such order, within twenty days after the entry of the order finally affirming such order on appeal, and subject to the right reserved by said court in and by said Article XXVI to retake and resell said property and assets in case the purchaser shall fail to comply with any judgment, decree, or order of said court in respect to the payment of any claim specified in said Article XXVI within twenty days after the entry of the judgment, decree, or order requiring such payment, or, if an appeal be taken, within twenty days after the entry of the order finally affirming such order on appeal.

And the special master will at any time hereafter, at the request of the purchasers, their heirs, executors, administrators, or assigns, make all such further assurances for the more effectual conveyance of the property and assets hereby granted, bargained, sold, assigned, transferred, and conveyed, or intended so to be, or any part thereof, as by the purchasers, their heirs, executors, administrators, or assigns, at their own expense or charge, may be reasonably required.

II

That said Atlanta, Birmingham & Atlantic Railway Company, party of the second part, in consideration of the premises and of the sum of ten dollars ($10.00), lawful money of the United States, to it paid, receipt whereof is hereby acknowledged, and pursuant to the decree of foreclosure and sale, and by way of further assurance, has granted, conveyed, transferred, assigned, and released, and does hereby grant, convey, transfer, assign, and release unto the purchasers, parties of the sixth part, and their heirs, executors, administrators, and assigns forever the property and assets hereinafter in this indenture described;

To have and to hold all and singular said property and assets unto the purchasers, and their heirs, executors, administrators, and assigns, to their and each of their own proper use, benefit, and behoof forever, subject as aforesaid.

III

That said B. L. Bugg, as receiver as aforesaid, party of the third part, in consideration of the premises and the sum of ten dollars ($10.00), lawful money of the United States, to him in hand paid, receipt whereof is hereby acknowledged, and pursuant to the decree of foreclosure and sale, without any covenant or warranty, express or implied, (a) has granted, conveyed, transferred, assigned, and agreed to deliver and by these presents does grant, convey, transfer, assign, and agree to deliver all muniments of title, books, documents, or other papers in his possession or control relating to or concerning or useful in connection with the property and assets hereinafter in this indenture described; and all cash, investments of cash, accounts and note receivable, materials and supplies, and other current assets now in his possession as receiver as aforesaid, subject, however, to the provisions of subparagraph (b) of subdivision III of Article XXXII of the decree of foreclosure and sale as to the fund in said subparagraph mentioned; and (b) has granted, conveyed, transferred, assigned, and released, and does hereby grant, convey, transfer, assign, and release all his right, title, interest, estate, and claim as receiver as aforesaid in and to any other property included in the property and assets hereinafter in this indenture described, and to or in which he may have any right, title, interest, estate, or claim as receiver as aforesaid, unto the purchasers, parties of the sixth part, and their heirs, executors, administrators, and assigns, forever, subject as aforesaid;

To have and to hold all and singular said property and assets unto the purchasers, and their heirs, executors, administrators and assigns to their and each of their own proper use, benefit, and behoof forever, subject as aforesaid.

IV

That said Old Colony Trust Company, as trustee under said first mortgage dated January 1, 1904, and said supplemental mortgage

dated September 3, 1904, party of the fourth part, in consideration of the premises and the sum of ten dollars ($10.00) lawful money of the United States to it paid, receipt whereof is hereby acknowledged, and pursuant to the decree of foreclosure and sale, without any covenant or warranty, express or implied, has released, and by these presents does release unto the purchasers, parties of the sixth part, and their heirs, executors, administrators, and assigns forever, all its right, title, and interest as such trustee in and to the property and assets hereinafter in this indenture described;

To have and to hold all and singular said property and assets unto the purchasers, and their heirs, executors, administrators, and assigns, to their and each of their own proper use, benefit, and behoof forever, subject as aforesaid.

V

That said Irving Bank-Columbia Trust Company, as trustee under said income mortgage, party of the fifth part, in consideration of the premises and the sum of ten dollars ($10.00) lawful money of the United States to it paid, receipt whereof is hereby acknowledge, and pursuant to the decree of foreclosure and sale, without any covenant or warranty, express or implied, has released, and by these presents does release, unto the purchasers, parties of the sixth part, and their heirs, executors, administrators, and assigns forever all its right, title, and interest as such trustee in and to the property and assets hereinafter in this indenture described;

To have and to hold all and singular said property and assets unto the purchasers, and their heirs, executors, administrators, and assigns, to their and each of their own proper use, benefit, and behoof forever, subject as aforesaid.

VI

The property and assets described in the decree of foreclosure and sale and thereby directed to be sold, and by this indenture granted, bargained, sold, assigned, transferred, and released, or intended so to be, are the following: —

All the property and assets of every kind and character of said Atlanta, Birmingham & Atlantic Railway Company and/or of said B. L. Bugg as receiver of said Atlanta, Birmingham & Atlantic Railway Company, including (without intending that said property and assets be in any manner limited to or restricted by the specification of the property and assets hereinafter more particularly described) the following property and assets:

One

(a) All that certain line of railroad, beginning in or at the city of Brunswick, in the county of Glynn, and running thence through

the counties of Glynn, Brantley, Pierce, Bacon, Wilcox, Coffee, Irwin, Ben Hill, Turner, Crisp, Dooly, Macon, Taylor, Talbot, Meriwether, Coweta, Fayette, Campbell, and Fulton, to and into the city of Atlanta, in said county of Fulton, all in the State of Georgia, and also that certain branch line of railroad, beginning in or at the town of Sessoms, in said county of Bacon, and running thence, through said county of Bacon and the county of Ware, to and into the city of Waycross, in said county of Ware, all in the State of Georgia, and also that branch line of railroad beginning in or at the city of Fitzgerald, in said county of Ben Hill, and running thence, through said counties of Ben Hill and Irwing and through the counties of Tift, Colquitt, and Thomas, to and into the city of Thomasville, in said county of Thomas, all in the State of Georgia;

(b) All that certain line of railroad beginning in or at the town of Manchester, in said county of Meriwether, and running thence through said county of Meriwether and the county of Troup, all in the State of Georgia, and through the counties of Chambers, Randolph, Clay, Talladega, Shelby, and Jefferson, all in the State of Alabama, to and into the city of Birmingham, in said county of Jefferson, State of Alabama;

(c) All branches, sidings, tracks, yards, terminals, stations, buildings, towers, freight houses, roundhouses, turntable, shops, telephone lines, telegraph lines, and all property of every kind and description, real or personal, now used or operated in connection with any of said lines of railroad;

(d) All those certain parcels situated in the county of Duval, State of Florida, more particularly described in an indenture dated August 23, 1917, between said Atlanta, Birmingham & Atlantic Railway Company and said The Equitable Trust Company of New York, as trustee, recorded in the public records of Duval County, Florida, on November 8, 1917, in mortgage book No. 113 on page No. 534.

Together with all and singular the tenements, hereditaments, and appurtenances belonging or in any wise appertaining to said lines of railroad and the branches and extensions thereof and the other properties hereinabove mentioned, or to any part thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, as well in law as in equity, of said Atlanta, Birmingham & Atlantic Railway Company and/or said B. L. Bugg as receiver as aforesaid, in and to the same and every part and parcel thereof, and any and all corporate or other rights, privileges, and franchises (including the franchise of being a corporation) which said Atlanta, Birmingham & Atlantic Railway and/or said B. L. Bugg as receiver as aforesaid, now has, for or appertaining to the ownership, construction, maintenance, use, and/or operation of the lines of railroad and other properties hereinabove mentioned.

Two

The following locomotives, cars, and equipment:

A. Locomotives, cars, and equipment in service as follows:

	Number	
Locomotives—		
Freight	40	
Passenger	13	
Freight and passenger	17	
Switching	10	
Total locomotives		80
Freight train Cars—		
Box cars	877	
Flat cars	282	
Stock cars	24	
Coal cars	703	
Caboose cars	45	
Other freight-train cars	29	
Total freight-train cars		1,960
Passenger-train cars—		
Coaches	32	
Combination passenger cars	2	
Other combination cars	13	
Baggage and express cars	6	
Other passenger-train cars	1	
Total passenger-train cars		54
Company service equipment—		
Business cars	2	
Ballast cars	3	
Derrick cars	2	
Other company service cars	111	
Total company service cars		118
Grand total all cars in service		2,132

B. Forty-five (45) 50-ton steel underframe composite hopper coal cars, which were under construction at March 31, 1926.

C. One hundred (100) 40-ton steel underfame flat cars to be constructed pursuant to contract executed January 28, 1926, pursuant to court order dated January 16, 1926.

Three

All right, title, interest, and demand of said Atlanta, Birmingham & Atlantic Railway Company and/or said B. L. Bugg, as receiver as aforesaid, and/or said Irving Bank-Columbia Trust Company, as trustee as aforesaid, and/or said Old Colony Trust Company, as trustee as aforesaid, in and to the following special funds, subject to withdrawals and additions prior to the delivery of possession to the purchaser:

(a) A fund on deposit with Fulton National Bank representing proceeds of sale of telephone line between Douglas and Waycross with interest thereon, amounting at February 28, 1926, to	$509.25
(b) A fund on deposit with the Equitable Trust Company of New York, representing the proceeds of sale of certain properties released from the lien of the first and refunding mortgage amounting (with interest accrued thereon to April 1, 1926) on April 23, 1926, to	167,818.84

Provided, however, that, until the first and refunding mortgage shall have been satisfied, said fund (except any portion thereof which may, by an order of said court made after due notice to the trustee under the first and refunding mortgage, be adjudged to represent the proceeds of property subject at the time of its sale to the prior and superior lien of the first mortgage) shall be held separate and apart by the purchasers, their successors and assigns, as proceeds of property subject at the time of its sale to the prior and superior lien of the first and refunding mortgage, and shall only be paid out, with the approval of the trustee under the first and refunding mortgage, for the purposes in article eighth of the first and refunding mortgage provided.

(c) Fund held by Guaranty Trust Company of New York representing proceeds of insurance on destroyed cars with interest thereon, amounting at February 28, 1926, to---------- $1,232.28

Four

$5,000 par value of the common stock of Atlantic Compress Company, Atlanta, Georgia.

Five

All the right, title, and interest of said Atlanta, Birmingham & Atlantic Railway Company and/or said receiver and/or said Irving Bank-Columbia Trust Company, as trustee as aforesaid, and/or Old Colony Trust Company, as trustee as aforesaid; to receive upon the satisfaction of the first and refunding mortgage any and all securities and/or cash then held by the trustee thereunder.

Six

All and singular the property and franchises of every nature and description whatsoever which on November 1, 1915, belonged to said Atlanta, Birmingham & Atlantic Railway Company or were thereafter acquired by it or by said B. L. Bugg, as receiver as aforesaid, or in or to which it then had or its said receiver thereafter acquired or had any estate, right, title, interest, property, possession, claim, or demand whatsoever, and not subsequently released from the lien of the income mortgage, including specifically all lands, tenements, hereditaments, and appurtenances thereto and all buildings, structures, fixtures, and other improvements; all lines of railroad, branches, sidings, tracks, yards, terminals, stations, buildings, towers, freight houses, roundhouses, turntables, shops, machinery, tools, telephone lines, telegraph lines, fences, bridges, locomotives, cars and other equipment, and rolling stock; all materials coal, oil, and other supplies; all maps, drawings, profiles, records, deeds patents, patent rights, copyrights, licenses, and processes; all cash, investments of cash, bank accounts, deposits, loans, bills and notes receivable, traffic and car service balances, and other receivables, claims, advances, stock, bonds, notes, and other securities contracts, agreements, consents, leases, leaseholds, assignments, and other rights and interests;

and any other and all other property, real and peronal, tangible and intangible, of whatsoever nature and description.

VII

It is expressly understood and agreed that none of the recitals contained in this indenture are made by or on behalf of the receiver or the said trustees, or either of them.

It is further understood and agreed that no personal covenant, warranty, or liability shall be implied against or is assumed or undertaken by the special master, the receiver, the said trustees, or either of them, the purchasers, or either of them, or by any of said parties by reason of the execution of this indenture or by reason of any covenant or recital herein contained.

This indenture may be executed in two or more counterparts, all of which shall be deemed to constitute one and the same instrument.

In witness whereof the special master and the receiver have hereunto set their respective hands and seals, and the Railway Company and the trustees have caused these presents to be executed in their names and on their behalf respectively, by their respective presidents, or vice presidents and their respective corporate seals to be hereunto affixed and attested by their respective secretaries or assistant secretaries the day and year first above written.

Approved as to form:

———— ————, *United States District Judge.*

————————, *as special master as aforesaid.*

Executed by the said Albert G. Foster, special master, in the presence of—

———— ————.

———— ————. ———— ————, *as receiver as aforesaid.*

Executed by the said B. L. Bugg, receiver, in the presence of—

———— ————.

———— ————.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY,

By ———— ————, *President.*

Attest: ———— ————, *Secretary.*

Executed by the said Atlanta, Birmingham & Atlantic Railway Company in the presence of—

———— ————.

———— ————.

OLD COLONY TRUST COMPANY, *as Trustee as aforesaid,*

By ———— ————, *Vice President.*

Attest: ———— ————, *Secretary.*

Executed by the said Old Colony Trust Company, trustee, in the presence of—

———— ————.

———— ————.

IRVING BANK-COLUMBIA TRUST COMPANY,
as Trustee as aforesaid.
By ——— ———, *Vice President.*
Attest:
——— ———, *Secretary.*
Executed by the said Irving Bank-Columbia Trust Company in the presence of—
———— ———.
———— ———.

71 *Exhibit A* 5454

Valuation Docket No. 1

(Page 679.) IT IS ORDERED that the following be, and they are hereby declared to be, the final valuation of the Atlanta, Birmingham & Atlantic Railroad Company, Alabama Terminal Railroad Company, and Georgia Terminal Company, as of June 30, 1914.

ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD COMPANY

(Page 684.) Final value: After careful consideration of all the facts contained in the tentative and supplemental tentative valuations, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the values, for rate-making purposes, of the property of the carrier owned and used and used but not owned, devoted by the carrier to common-carrier purposes, are found to be as follows:

Wholly owned and used	$20,404,960
Used but not owned:	
Leased from Georgia Terminal Company	1,406,147
Leased from Alabama Terminal Railroad	1,400,000
Leased from Southwestern Railroad Company	150
Leased from Southern Railway Company	14,000
Leased from Birmingham Southern Railroad Company	20,000
Total used but not owned	2,840,297
Total used	23,245,257

(Page 685.) There is included in the value above stated as owned and used by the carrier the sum of $410,000 on account of working capital, including materials and supplies.

And the values, as that term is used in the interstate commerce act, of the property owned but not used and of the total property owned by the carrier and devoted to common-carrier purposes are found to be as follows:

Wholly owned but not used:	
Leased to Ocilla Southern Railroad Company	$67,000
Leased to Alabama Northern Railroad Company	4,400
Leased to Southern Railway Company	11,000
Total owned but not used	82,400
Total wholly owned and used	20,404,960
Total owned	20,487,360

ALABAMA TERMINAL RAILROAD COMPANY

(Page 687.) Final value: After careful consideration of all the facts contained in the tentative and supplemental tentative valuations, appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value for rate-making purposes of the property of the Alabama Company owned but not used, devoted by the carrier to common-carrier purposes, are found to be as follows:

Wholly owned but not used:	
Leased to and used by the carrier	1,400,000
Upon a consideration of all the facts enumerated in the preceding paragraph, the value for rate-making purposes of the carrier property owned by the Alabama Company leased to the carrier and subleased by it to the Woodward Iron Company and devoted to non-carrier uses upon date of valuation is	800,000

GEORGIA TERMINAL COMPANY

(Page 689.) Final value: After careful consideration of all the facts contained in the tentative and supplemental tentative valuations, appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the values, as that term is used in the interstate commerce act, of the property of the Georgia Company, owned but not used, devoted to common-carrier purposes, are found to be as follows:

Wholly owned but not used:	
Leased to the carrier	1,406,147
Leased to Southern Railway Company	20,000
Total	1,426,147
Total carrier property—June 30, 1914	24,113,507

Less retirement of the following, included above:		
Leased to Ocilla Southern Railroad	$67,000	
Leased to Alabama Southern Railroad	4,400	
Leased to Woodward Iron Company	800,000	
		$871,400
Net carrier property		23,242,107
Net additions and betterments, 6–30–14 to 12–31–26.		
Road property	$1,058,576.46	
Equipment	579,211.84	
General expenditures	11,998.56	
		1,649,786.86
Total value of carrier property 12–31–26		24,891,893.86
Less working capital included—Page 685		410,000.00
Net investment in carrier property		24,481,893.86

Property held for purposes other than those of a common carrier

(Page 683.) The carrier owns 825.818 acres of land which are not devoted to transportation purposes. The original cost of these lands can not be ascertained. The present value of these lands, including improvements thereon, are divided as follows:	
In Georgia, 740.808 acres	$69,442.81
In Alabama, 85.010 acres	2,952.45
Total	72,395.26
(Page 687.) The Alabama Company owns 128.948 acres of land which is held for noncarrier purposes. The data obtained with regard to the original cost of these lands is shown in Appendix 2. The present value of the 128.948 acres of noncarrier lands, and improvements thereon, owned by the Alabama Company is	182,813.51
(Page 689.) The Georgia Company owns 83.653 acres of land not used for common-carrier purposes, the value of which, including improvements, on June 30, 1914, was	859,749.87
(Page 684.) Noncarrier lands granted to the carrier 15.27 acres, present value	1,656.49
Total noncarrier property 6–30–14	1,116,615.13
Additions, less retirements 6–30–14 to 12–31–26	146,354.87
Total noncarrier property, 12–31–26	1,262,970.00
Total carrier and noncarrier property Dec. 31, 1926	25,744,863.86

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Exhibit B

[Stamped:] Interstate Commerce Commission. Docket No. 5454, 5470. Date, 2-4-29. Exhibit B. Witness: Bugg.

ATLANTA, PIRMINGHAM AND COAST RAILROAD COMPANY—GENERAL BALANCE SHEET, ASSET SIDE, JANUARY 1, 1927

Item (b).	Memo. 1-26-29.
Investments:	
701. Investment in road and equipment	$24,481,893.86
705. Miscellaneous physical property	1,262,970.00
706. Investment in affiliated companies:	
(A) Stock	122,500.00
(C) Notes	74,680.00
707. Other investments: (A) Stock	1,100.00
Total investments	25,943,143.86
Current assets:	
708. Cash	345,457.97
713. Traffic and car-service balances receivable	28,314.56
714. Net balance receivable from agents and conductors	26,258.41
715. Miscellaneous accounts receivable	278,165.45
716. Material and supplies	818,583.63
719. Other current assets	3,838.75
Total current assets	1,500,618.77
Deferred assets:	
720. Working fund advances	2,758.00
Total deferred assets	2,758.00
Unadjusted debits:	
723. Rents and insurance premiums paid in advance	1,122.64
727. Other unadjusted debits	176,795.55
Total unadjusted debits	177,918.19
Grand total	27,624,438.82

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY—GENERAL BALANCE SHEET, LIABILITY SIDE, JANUARY 1, 1927

Item (b).	Memo. 1-26-29.
751. Capital stock	$27,001,407.26
Total stock	27,001,407.26
Current liabilities:	
759. Traffic and car-service balance payable	79,107.44
760. Audited accounts and wages payable	444,405.73
761. Miscellaneous accounts payable	13,760.55
768. Other current liabilities	18,308.67
Total current liabilities	555,582.39
Deferred liabilities:	
770. Other deferred liabilities	3,702.11
Total deferred liabilities	3,702.11

Unadjusted credits:	
771. Tax liability	$7,968.92
778. Other unadjusted credits	55,780.14
Total unadjusted credits	63,747.06
Corporate surplus:	
779. Additions to property through income and surplus	
Total appropriated surplus	
784. Profit and loss (debit) balance	
Total corporate surplus (deficit)	
Grand total	27,624,438.82

73 Before the Interstate Commerce Commission

APPLICATION OF THE ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY and APPLICATION OF THE ATLANTIC COAST LINE RAILROAD COMPANY } Dockets No. 5454, No. 5470

NARRATIVE STATEMENT OF THE EVIDENCE

ATLANTA, GA., *May 20, 1926.*

Before Attorney-Examiner H. C. Davis.

Appearances:

J. A. Fowler, jr., 43 Exchange Place, New York City, and S. E. Young, 53 State Street, Boston, Mass., appearing for reorganization committee of A., B. & A. Ry. Co.

George B. Elliott, C. H. Davis, and R. C. Alston, Wilmington, N. C., for Atlantic Coast Line Railroad Company.

Edgar Watkins and Harry T. Moore, 403 Atlanta Trust Building, Atlanta, Ga., for Atlanta Freight Bureau.

Charles E. Cotterill, 535 Grant Building, Atlanta, Ga., appearing for stockholders' protective committee.

Statement by Examiner Davis

The Interstate Commerce Commission has set for hearing at this time and place, the application of the Atlanta, Birmingham & Coast Railroad Company, for authority to acquire the Atlanta, Birmingham & Atlantic Railroad, and to issue certain securities, Finance Docket No. 5454. Also the application of the Atlantic Coast Line Railroad Company, for authority to acquire control of the Atlanta, Birmingham & Coast Railroad Company, to assume certain obligations, and so forth, Finance Docket No. 5470. (Tes. 4.)

74 (Intervention on behalf of the Atlanta Freight Bureau was permitted to be filed.) (Tes. 6.)

(Correspondence from various chambers of commerce, Lions Club, Kiwanis Club, mayor and councils of various cities in Georgia, etc., all in favor of granting the application, was received and filed.) (Tes. 7-8.)

On behalf of the applicant in No. 5454, Mr. Fowler filed affidavits of the publication of the notice in the Brunswick News, the Birmingham News, and the Atlanta Constitution.

(A certified copy of a decree of foreclosure and sale dated April 30, 1926, made by the United States District Court, Northern District of Georgia, Northern Division, in the case of Birmingham Trust & Savings Company *v.* A., B. & A. Ry. Co., consolidated cause in equity No. 156, and the constituent causes in equity Nos. 156, 188, 187, and 190, was received in evidence as Exhibit No. 1.) (Tes. 8–9.)

(A certified copy of the opinion of the United States District Court judge on objections of stockholders to decree offered by bondholders and creditors was received in evidence as Exhibit No. 2. A certified copy of the order of the same court approving the plan, under date of May 15, 1926, was received in evidence as Exhibit No. 3. The report and order of the commission in Valuation Docket No. 1, A., B. & A. R. R. Co. et al., 75 I. C. C. 645–743, was received in evidence as Exhibit No. 4.) (Tes. 9–11.)

Mr. Fowler stated he would like to incorporate in the record by reference the tentative plan of the commission known as Consolidation of Railroads, 63 I. C. C. 455–464, and the order made thereon on page 465; also certain excerpts from the report of William Z. Ripley, beginning at the second full paragraph on page 542 of
75 the volume and continuing down to the middle of page 544.

The examiner stated that in the absence of any objection the transcript would show that the pages referred to have been received by reference. (Tes. 11.)

GEORGE E. WARREN was called as a witness, and having been duly sworn testified as follows:

DIRECT EXAMINATION

My name is George E. Warren; I am vice president of the Chase National Bank, New York, and have been connected with that bank since a year ago April. My former connection was vice president of the Irving Bank-Columbia Trust Company, formerly known as the Columbia Trust Company, which was trustee under the income mortgage of the Atlanta, Birmingham & Atlantic Railway Company. It was formerly depository of the receiver's certificates issued in the old receivership of the A., B. & A.

I first became familiar with the A., B. & A. Railroad during the old receivership; I think it was 1916. The road was in receivership twice; it had a reorganization and went back into receivership again. I referred to the former receivership, which started about 1909, and terminated January 1, 1916, and this present receivership began in February, 1921. The A., B. & A. R. R. Company is the old company, organized in 1906, going into receivership in 1909, and being, for all practical purposes, dissolved on December 31, 1915; the A., B. & A. Ry. Company was the new company, organized to

take over the properties on January 1st, 1916, and since the old receivership I have kept in more or less close touch with the A., B. & A. affairs.

I am chairman of the income bondholders' protective committee, and a member of the joint reorganization committee. The
76 names and connections of each of the members of the two bondholders' committees: I have given my own; Joseph P. Bradshaw, banker, member of the firm of Clark, Dodge & Company; Edwin P. Maynard, president, Brooklyn Trust Company; Charles F. Ayer, capitalist, of Boston; and George E. Roosevelt, banker, member of the firm of Roosevelt & Son, New York. That is the income bondholders' committee. The Atlanta & Birmingham bondholders' committee consisted of Francis R. Hart, vice chairman of the Old Colony Trust Company, Boston; James H. Perkins, president, Farmers Loan & Trust Company, New York; Percy R. Pyne, 2nd, New York banker, and F. J. Lisman, New York banker of the firm of F. J. Lisman & Company, and George Bramwell Baker, of Boston, a retired banker. (Tes. 12–14.)

The old receivership beginning in about 1909 was a receivership under foreclosure of the A., B. & A. Railroad Company's first mortgage bonds. The outcome of that receivership was the organization of the new company, leaving the A. and B. first mortgage bonds undisturbed—Atlanta and Birmingham—and the issuance of income bonds at par, and unpaid interest to the holders of the receiver's certificates, which I think amounted to about $5,200,000. The A. and B. first mortgage bonds were the underlying bonds and were undisturbed [undistributed] in the receivership or reorganization. The receiver's certificates got par for par and unpaid interest. The A., B. & A. Railroad Company first mortgage bonds and the A., B. & A. Railroad stock got nothing in the reorganization. The receivership and reorganization expense, and certain equipment notes, were paid off in cash, which was raised by the issuing of the stock of the A., B. & A. Railway Company, the new company. The amount of stock sold was $30,000,000 par value of stock, at $12 a share,
77 producing $3,600,000. This was sold by the reorganization committee to the public. The stock had been issued by the railway company against the acquisition of the properties. There has never been a dividend or any other distribution on the stock of the A., B. & A. Railway Company. There have been frequent exchanges of this stock; it is listed on the New York Exchange, and the biggest volume of sales that I recall was in March, I think, about the time this contemplated sale to the Atlantic Coast Line was announced. As I recall from the reports in the daily papers over 100,000 shares changed hands in two or three days, more than one-third of the bonded capitalization. The last quotation I noticed of this stock on the stock exchange was 75 cents a share, or three-quarters. The two bondholders' committees were organized in 1921, one on September 26, and the income bondholders' committee on December 7.

As to what efforts were made towards the enforcement of the security for the bonds, or what different possibilities were considered by the two committees:

At one time we considered the possibility of scrapping the property, its operating losses were so heavy at the time it seemed hopeless to have a reorganization, but it did not seem practical to scrap it, and about that time there seemed to be some local interest in the situation and we hoped the State of Georgia might take some action to protect the railroad, but nothing developed.

There was an actual movement on foot that gained some momentum and then petered out. I understand the receiver applied for a $10,000,000 loan from the Government, but was not successful in obtaining it. As to the negotiations that were had looking toward the disposition of the properties to the Seaboard Air Line:

78 About two years ago, our committees were approached by Mr. Warfield of the Seaboard and we had numerous conferences which resulted in plan which was in a rather indefinite form at that time for the acquisition of the property—the A., B. & A. properties, by the Seaboard Air Line, on the basis of the organization of a new company, which would finance its cash requirements through the issue of first mortgage bonds to be guaranteed by the Seaboard, the Atlanta, Birmingham—the A., B. & A. bondholders to receive preferred stock or debenture bonds, which the Seaboard would guarantee to pay the interest on, on a sliding scale basis, but we never got to definite terms on that, but the general idea was they would not pay the interest for the first year or two and then they would guarantee about two per cent for two years, and three per cent for two years, and so on, until the maximum guarantee of five per cent had been reached. They wanted ten years leeway to reach that point. These negotiations strung along, and the Seaboard made them rather less attractive as time went on, as we discussed it with the committee. (Tes. 14–18.)

The Seaboard never made us a definite offer that we could reject or accept, unless we could say the rough memorandum used for discussion was an offer. The next move made by the bondholders' committees was this:

A few months later we were approached by Mr. Woodward, of Birmingham, who said he represented some interests who would buy our bonds, and we discussed the terms with him, and I think he originally offered forty cents on the dollar, and after several conferences we agreed on a price of forty-five, tentatively, and he wanted thirty days for the purpose of confirming this with his people, and the matter strung along thirty or sixty days, and finally he

79 came in and said he was not able for certain reasons to carry out the proposed offer. He then asked for further delay, with the idea that he might interest another group, I believe it was a local group, in buying the bonds at the price, but it went along for several months, and finally he advised us he was unable to do anything further.

About a year ago Mr. Babage came to see us and said he represented interests who wanted to acquire the A., B. & A., and I told him we would like to know who it was but he refused to disclose his associates and said they were responsible and would put up $2,500,000 in cash. His plan in a general way was that the bondholders should take ten dollars in cash on the bonds and thirty-five dollars in new preferred stock and a small amount in common stock to be agreed on, and his people would have control of the property and would have about seventy-five or eighty per cent of the stock equity. We tried to get better terms from him and tried to get him to disclose whom he represented. We naturally did not want to enter a contract with undisclosed parties, and the result was he finally dropped out.

Mr. Babage told me after the announcement was made of the contemplated sale to the Atlantic Coast Line that his people expected to turn the property over to the Coast Line if they got it. The preferred stock the Seaboard was figuring on for the bondholders was par for par.

Last summer we thought the situation over, and in view of the failure of the several negotiations we considered the possibility of raising the money and reorganizing the property independently, yes. In view of that we thought it might be advisable to try to interest some of the stockholders, so I tried to locate some of the largest stockholders and see if they would not form a stockholders' protective committee with the idea of helping us to work out a reorganization plan, but those that were apparently stockholders of record in large blocks had apparently disposed of their holdings sometime prior to that time and I was not able to locate any very large holdings. I talked to one representative of the Seaboard bank that represented some stock holdings that rather seriously considered organizing a committee, and also to Mr. Howard Payne, who was a large stockholder, or a stockholder in a substantial amount, and after they looked into the situation and the figures they said they did not see that there was anything in it for the stockholders and did not want to run the risk of running up an expense by organizing a committee, the legal expenses, and expenses of a depository, and so nothing came of it. Then I talked it over or took up the figures with the Chase Securities Corporation, which is a finance corporation connected with our bank, hoping they might figure it out in some way to get funds to lift the receivership, and after they looked into it they decided there wasn't anything in it which would justify the offering of securities. About that time or shortly afterwards some members of the committee came down here and went over the road with the receiver and made a rather careful study of the situation, still having in mind the possibility of perhaps selling an issue of bonds to the public and taking the road out of receivership, but after we had studied it further it appeared to us it would be a very unwise and risky thing to do. Judging from the past history of the property

it did not give much promise of future earnings. When we studied the source of the traffic, it appeared a very large percentage of it came over connecting lines which it might not be possible to hold in the future. If these lines should construct through connections to handle their own business, they would not continue to give it to the A., B. & A., and, finally, much to our disappointment,
81 we decided that the only alternative was to go ahead and try to sell the property and save what we could for the bondholders. and about that time we were approached by the Walters of the Seaboard, and Mr. Walters—I mean, the Coast Line—with the idea that they might work out some plan with us by which they could take over the property, and Mr. Walters submitted me a draft of the proposition for consideration, which we studied, and after numerous conferences, I think lasting several months, we finally came to an agreement and signed a contract with him, a copy of which, I think, is in the record. (Tes. 18–21.)

There were several proofs of the typewritten memorandum of the terms and at least seven proofs of the printed agreement, which agreement was signed February 23, 1926, and each of those was gone over by myself and Mr. Roosevelt of our committee and by Mr. Hart and perhaps others in Boston; also by Mr. Walters and various other persons on behalf of the Coast Line. Various suggestions and alterations were made; the original proposition was materially changed by the time it was signed up. I felt by that time the committees had exhausted all possibilities and had taken advantage of every opportunity that turned up; I might state also that our committees made an effort to interest the St. Louis–San Francisco Railroad and I understand that Mr. Brown of that road went into the subject thoroughly and finally decided that the A., B. & A. would not be of any value to them, and I believe separate members of the committee at times worked on other tentative leads which never resulted in anything. The three counterparts of the agreement between the Atlantic Coast Line Railroad Company and the two bondholders' committees therein described, dated February 23, 1926, which together show the execution by the Coast Line and on behalf of each of the members of the two bondholders' committees, are the original counter-
82 parts of the agreement between the committees and the Coast Line.

(The agreement between the Atlantic Coast Line and the bondholders' committees was received in evidence as Exhibit No. 5.) (Tes. 21–23.)

The two counterparts of the plan and agreement of reorganization dated February 23, 1926, for reorganization of the A., B. & A. Ry. Co., which show the execution by the members of the reorganization committee and of the members of the two bondholders' committees, are the original counterparts of the plan and agreement.

(The plan and agreement of the reorganization committee was received in evidence as Exhibit No. 6.)

To summarize that plan: It is very simple and provides for the organization of a company to take over the property of the A., B. & A. No bonds are to be presently issued but an issue of preferred stock of the authorized amount of $5,200,000 is to be issued, and 150,000 shares of common stock, of no par value; the preferred stock is to be issued to the Atlanta and Birmingham and A., B. & A. bondholders, at the rate of sixty per cent of their present holdings; the common stock is sold to the Atlantic Coast Line for approximately $3,500,000, which money is to be used to lift the receivership and pay off all prior claims.

The amount is $3,500,000. The new preferred stock is sold on the basis of the diminished value, and the last I heard it was 88, so that the old bondholders are getting about 52 cents on the dollar in the market value, with nothing for unpaid interest. No provision is made in the plan for the stock of the A., B. & A. Railroad Company. In my opinion that is absolutely fair treatment of that stock; I don't see how they could expect to get anything when the
83 creditors are taking about 50 cents on the dollar, without interest five years. I know of no opposition to the plan as such with the exception that I believe one A. and B. bondholder raised some objection to the equal division of the new securities between the two classes of bonds. That bondholder deposited his bonds under the plan and only objected to that division. The only other opposition to the plan that I know of is that of the stockholders, which I mentioned. (Tes. 24–26.)

(A certificate of the Irving Bank-Columbia Trust Company, showing deposit of $4,288,681.83, principal amount of income bonds under the plan, was received in evidence as Exhibit No. 7. Certificates of the Farmers Loan & Trust Company and Old Colony Trust Company, depositaries, showing deposit of $3,592,000 A. and B. first mortgage bonds under the plan, making a total of bonds deposited under the plan of $7,880,681.83, which certificates are made as of the close of business on May 17th, were received in evidence as Exhibits Nos. 8 and 9.)

I think the fact that the preferred stock of the new company is to be non-voting, except as to certain specific matters, and except also in case of default in payment of the preferred stock dividend, is a proper security to issue under the circumstances. We receive preferred stock in place of bonds and receive a very slight advantage in exemption from normal income taxes.

The stock under the Federal income-tax law is not subject to normal tax, where the bonds would be taxable—the interest on the bonds—the bondholders having no voting power on the bonds, of course, have no interest in anything other than the receipt of income on the investment, but in the event of failure to receive a dividend, they then have the power to vote the stock and take any necessary steps to protect their interests. (Tes. 26–28.)

84 The bondholders will be getting, in the form of new preferred stock, two things, one a right in the assets of the A., B.

& C. Company and another the obligation of the Coast Line in the form of a guarantee. The guarantee of the Coast Line is the important thing in our minds; we did not give much consideration to the value of the assets. As to whether in my opinion the public interest requires that the holders of the new preferred stock be held responsible for the management of the new company, except in the event of default on the preferred stock dividend, I don't see why they should as preferred stockholders more than they do as income bondholders or first-mortgage bondholders. The new common stock is to be no par; in my opinion that is a proper security. I see no obligation of par value on the stock issued for equity. The stock will represent the assets of the new company, subject to the preferred stock, and those assets have an appraised value of a great many million dollars. The earning power of the new company will be entirely disproportionate to the value of the assets. I do not see how it would be possible to place any exact value on the properties represented in the common stock; it would be absolutely meaningless. It indeed does not mean a thing.

I believe there were a group of bondholders, representing more or less common interest, and represented by one attorney, objecting. I understand some of the bonds had not been deposited, though some represented by the attorney had been. The par value of the stock issued in the former reorganization was $30,000,000; 300,000 shares of the par value of $100 a share. It sold at 12 and went close to nothing; I think five-eighths was the low. (Tes. 28–30.)

85 CROSS-EXAMINATION

Under the plan that is here proposed the Coast Line interests have obligated themselves to advance in cash approximately three and a half million dollars in general figures; it would obligate itself also to guarantee the payment of $260,000 a year to the existing bondholders. This begins one year after date of acquisition. They don't pay anything the first year. Thereafter the obligation is to guarantee that the existing bondholders who accept the preferred stock shall receive annually a sum equal to approximately $260,000 a year. Other than that—the advancement of three and a half million dollars and the giving of its guarantee if that property should not earn $260,000, in which event the Coast Line would make up the difference—the Coast Line carries no obligation of any substantial character. The payment of 6 per cent on the three and a half million dollars advanced would be something in the neighborhood of $200,000 in addition. I mentioned the fact that under the proposed reorganization, approval of which is sought here, there is a plan for the issuance of 150,000 shares of non-par common stock. That is to be taken as representing the equity in the property. That stock is to be sold to the Coast Line for the money that is required to lift the receivership. That means in substance that the Coast Line would receive all the physical assets of the property—for this

three and a half million dollars advanced, plus its guarantee of $260,000 a year.

Q. You say, then, these assets will be used against the issuance of 150,000 shares of common stock?

A. Well, the securities of the new company are issued and exchanged for the properties of the old. There is preferred stock and common stock.

When I used the phrase "equity" in describing the property
86 covered by the proposed issue of common stock. I meant whatever value there may be to the property after claims that rank ahead of the common stock—not existing stock, but common stock to be issued by the new company. We generally speak of equity as being what is left over in assets of the company after its debts are taken care of, all prior obligations. I think there are physical assets which from a physical standpoint alone have an appraisal of a number of millions of dollars. There would be no obligations, no bonded debt, on the new company at all at present; there is a provision under the plan, I believe, that bonds may be issued at future dates if required. (Tes. 30–33.)

My recollection is that the receivership certificates which were issued in the former receivership were sold at par, but I am not positive about that. I indicated that about a hundred thousand shares of stock of the existing company changed hands within a brief period of time, and along about the time of the announcement of the present proposed plan of reorganization. A large percentage of that turn-over occurred on the day the plan was announced by the news tickers in New York. I think the announcement came out around noon time and these transactions took place after that. I had in mind my belief that most of it occurred in connection with the effort of a number of then existing stockholders to get what they could on the market, after the announcement of the reorganization had been made. As to whether there was a considerable turn-over of the stock for a period of a number of months before the announcement was made: The stock has always been traded in, nearly every day, on account of the low price, and there is always more or less speculation in it. There was a considerable and a continued turn-over for a number of months prior to that, in small
87 amounts. I do not recall if, during a period of three or four or five months before the announcement of the reorganization, the tendency of the market quotations on the common stock was upward. I remember I think it sold as high as ten for a while. I did not pay much attention to the fluctuations of it. I did not own any. I only noticed it as a matter of interest once in a while. (Tes. 33–35.)

I imagine it was about 1922 or 1923 that the receiver made the application for the Government loan. The object of the loan was to lift the receivership and obtain funds to operate the property and see if we could not carry it on. To lift the receivership was

the idea. The obtaining of the loan at that time would have enabled the company to pay off its pressing debts. I do not recall the amount of the loan then applied for; I think it was $10,000,000. I don't recall whether the receiver renewed his application for such loan or not. I should say that one-half of the income bonds are in comparatively few hands, but the A. & B. first mortgage bonds are very widely scattered. The A. & B. bonds were issued to holders of the old receiver's certificates, and they were sold in large blocks to financial institutions, as short term investments. It is not the committee of the income bonds which has been in the main directing the effort at reorganization; we worked very closely together. Our loan is prior in some cases to the other group of bonds and subordinate in others. I believe they rank about fifty-fifty. That is the reason we pooled our interests.

Q. A considerable part of the bond interests represented in the committee is either banks or representatives of banks, I believe?

A. The interests representing the A., B. & A. bonds—income bonds—are largely represented by bankers, and banks,
88 but the A., B. & A. bonds are widely scattered—I mean, the A. and B.—among individual investors.

I do not think it is the committee representing the income bonds which in the main has been most active in efforts at reorganization. Most of the negotiations that have been carried on with other interests have been carried on by Mr. Hart, chairman of the A. & B. committee, and myself working together; we worked very closely together.

Q. You conceived the thought of interesting the then existing stockholders in the plan of reorganization, and went to some of them, and in a loose, general sort of way offered the plan of reorganiztion you then had in mind, perhaps involving participation by the stockholders?

A. There was no plan. I just had in mind that we might be able to interest the stockholders in taking another so-called gamble, and underwriting an issue of bonds to be sold to lift the receivership, if we decided the situation justified it. We had not made up our minds at that time. We thought it would be advisable to get some of the stockholders together, so there would be someone to talk to in case we developed such a plan.

Q. In a loose way, it contemplated some measure of advancement by the stockholders to make up the fund?

A. It appeared we would have to assess the stockholders such an amount that it would be almost hopeless.

It would be disproportionate, in relation to their stock. I would not say that that has been from the beginning and for years one of the difficulties which faced any organization. There are many cases where the stockholders are assessed and pay the assessment and it turns out well. In a case of this character, where the purchase price of the stock through a long period of years has

been comparatively low, and the stock widely scattered, that
89 presents a fundamental difficulty when thought is given to a plan of an assessment by stockholders on themselves, and a reorganization by them; I think because so many people buy stock, one or two dollars a share and speculate with the idea it will go up a half a point to-morrow perhaps and they will make a few dollars, and that is all they are interested in. Some purchasers of stock I think should be regarded as speculators and not as investors. We worked for three or four or five months I imagine over the tentative plans in negotiating with the Coast Line, first working on a memorandum setting up something along the lines we finally agreed on, but there were minor changes. In all the negotiations we could not figure how there could be any provision having in contemplation at all participation by existing stockholders. There was no such provision made in any of the tentative drafts. I don't think the receiver ever sat in on any of these conferences; he knew we were negotiating of necessity because the contemplated purchasers were looking into the road. I think they made inspection trips. (Tes. 35–39.)

I do not know what date the receiver knew from me or my committee that there was under immediate consideration a plan of reorganization, in which there was no provision to be made for participation by the stockholders, but it was somewhere around January 1, 1926.

Hayden Stone & Company were one of the orginal syndicate which underwrote the bonds, but whether they own bonds at the present I do not know. I do not know whether they did as far back as January, 1926; I never discussed the situation with them so I can not say whether they were bondholders or not. I could not tell you whether or not their ownership of bonds at one time was in their own behalf, or as trustee.

90 Thompson & McKinnon were not bondholders that I know of; nor Kidder Peabody; nor Benjamin & Ferguson; nor Erie & Dreyfus; nor Matilda O'Keefe. I don't know whether the trustees of Edith Perkins were; it might be. Very often they deposit the bonds in the name of the bank, and these names mean nothing to me, as bondholders. The same answer should be made as to W. J. Gorman & Company of New York. (Tes. 39–41.)

REDIRECT EXAMINATION

As to who is the largest holder of income bonds: George E. Roosevelt told me he owns $1,300,000 face value of bonds; he was a member of both committees. It is my recollection that the A., B. & A. stock had been selling for some time around one, two, and three and about December, 1925, it suddenly jumped to around ten and eleven and the explanation assumed was that the papers had published something to the effect that the Coast Line was interested in acquiring

the property, without any indication as to the terms on which the acquisition was to be made. Further, I believe there was a post card sent out from someone interested in this part of the country recommending that the stock be purchased; I think by Mr. May. A long time it had been going around one and two, for several years, when the temporary spurt occurred last fall or winter.

Concerning the renewal of the application for a Government loan: I recall that about the time he made the application for the $10,000,000 loan the time within which such application could be made expired. He got in the application about the time of the expiration. Referring to the Coast Line's obligation in respect to the new preferred stock, spoken of as amounting to something like $250,000 to $300,000 a year: The plan shows that the Coast Line also guarantees the principal of the new preferred stock in case of
91 redemption, merger, or dissolution, so there is a principal obligation in addition to the obligation as to dividends. Mr. Cotterill made some question as to the identity of the stockholders of the two bond issues. The certificates you filed of Irving Bank-Columbia Trust Company, the depository for income bonds, showing 110 holders of bonds and showing there are substantial, large holdings, and of the Farmers Loan & Trust Company and Old Colony Trust Company, the two depositaries of the A. & B. first mortgage bonds, showing 308 holders of these bonds, indicating holdings run in very large amounts, carries out my understanding as to it.

(The certificates referred to were received in evidence as Exhibits Nos. 10 and 11.) (Tes. 41–43.)

(The authorization by the reorganization committee, authorizing Mr. Warren to make the application to the Interstate Commerce Commission, was received as Exhibit No. 12, and the authorization of the reorganization committee to make return to questionnaire was received as Exhibit No. 13.)

I am familiar with the signatures of the persons signing the two authorizations just introduced. They are the signatures of those persons. These four persons are four members of the reorganization committee. (Tes. 43–44.)

RECROSS EXAMINATION

I can not say how long a period it was that this rise in the market quotations on this stock extended. I never paid very much attention to the stock quotations. Once in a while I noticed what they were. I did not mean to say that there was an immediate rise from a couple of dollars to ten dollars. That is, that it made the rise in a day or
so. I do not know just how the quotations fluctuated. Con-
92 cerning the renewal of the application for a Government loan: There was no application made for a loan under the recapture clause that I recall. As to whether I recall at any time knowing any

of the substantial bondholders also owing some substantial amount of stock:

I think when the old reorganization was put through there was some difficulty in raising the money, and some of those interested in the old receivership—in the old receivers certificates—in order to help out the situation, subscribed to the Haden Stone underwriting syndicate, and they are confidential. Of course, I haven't any idea about the extent, but I think some large bondholders did at that time take some stock.

The fact that as late as 1924 Hayden Stone & Company alone, taken with Kidder Peabody Company, had approximately 45,000 or 50,000 shares of stock between them, and were regarded as stockholders on the stock books, did not indicate they had it. It was not paying dividends and it was not transferred to the purchasers even. Since the period of my chairmanship of this committee I do not recall any conspicuous instance of a bondholder also having a material stock interest. The group to my mind seems to be entirely separate so far as I know—not very substantial ones. As to what become of the undistributed first mortgage bonds of the old company prior to the receivership: It ran along and the interest was paid on the bonds until, I think, the date of default was July, 1921, and when they defaulted and organized a committee, shortly afterwards. The first refunding mortgage bonds were never sold to the public; they were authorized for the future requirements of the property and used as collateral for loans, and under the plan it is contemplated that they will be eliminated through payment of the loans on them where they were held as collateral. There is just the old first mortgage
93 and the income mortgage to be dealt with. (Tes. 44–47.)

There is about $8,600,000 interest bonds outstanding. That is divided $4,090,000 of A. & B. first mortgage and the balance of A., B. & A. The question of bargaining entirely determined the price. We had offers, and figured with the Seaboard, figured the property worth 36 cents on the dollar, and then we had a cash proposition of 45 cents on the dollar; the first proposition I think we had from the Coast Line was a little less, and on negotiating it got a little better price than we started with the Coast Line, the actual bids. Approximately three and a half millions; I think it was so listed in the agreement. That is what they are paying for the 150,000 shares as of no par stock. As to whether that represents all the advances they make for that stock: Those are the only present advances made. They must obligate themselves to pay a rental or guarantee or whatever you call it.

Q. The preferred stock issued to bondholders will represent the actual property, the property investment, and the other will be clearing up the claims?

A. I did not get your question.

Q. The five million of bonds takes care of the five million of preferred stock takes care of outstanding bonds?

A. Takes care of the eight million and six, of bonds.

I would not say that the five million would practically represent the investment on the property; there is three million and six of cash goes in. The preferred stock would be the first obligation until they issue additional bonds. As to whether there are any other reasons why the preferred stock should be without voting power other than the saving of 2 per cent normal tax:

94 That is one real advantage. The bondholders will make such securities out with every advantage they could get, and save the normal income tax; otherwise, we would rather have debenture bonds, because the bondholders were not used to them and it was more or less a nuisance, and they have no interest in it—all they are interested in is the return on the investment. I don't think they want to assume the position of owners of the property until they have to.

They would not care to have anything to do with its management. As presently constituted, they would prefer to have bonds, or debenture bonds on which there would be no after question; there is such advantage in having preferred stock; as I see it, they want everything they could get out of it, and we prefer to have it in that way. It is a very great advantage to us. We estimate that this three and a half million includes a sufficient amount to pay all outstanding claims. Suppose some of the bonds do not come in; they are entitled I suppose, to the pro rata share of what the property would bring at a foreclosure sale. If you recall, the court reserves the right to keep open the offer under certain conditions, to permit them to come in. I will be much surprised if we do not have from 95 to 98 per cent at least. That has been taken care of in the court proceedings. The sale is set for the 16th of June and I imagine it would be to the advantage of the parties to give a reasonable time for the bonds to come in. There is no reason for shutting them out. There would be no attempt to treat these bondholders differently from any others.

It is provided in the plan that the cash distributive share of any bondholder who does not deposit will be provided by the Coast Line, and the Coast Line will receive the preferred

95 stock which the bondholder would have received if he had come in. That is either in the plan or in the agreement between the railroad company and the committee. There are just two live mortgages; the first refunding mortgage is a live mortgage but in carrying out the plan all the bonds are required so it will not have to be foreclosed; it would be released. As to the bonds outstanding it is my recollection that there are $825,000 principal amount of bonds outstanding under the first and refunding mortgage, and these have been pledged to secure debts in amounts less than the principal amount. I do not know the total of the debts. It was considerably less than the face amount of the bonds. Those debts are to be cared for in the reorganization. The obligation of the Coast Line to pay cash is not limited to the specified amounts, but is a more or less general obligation to provide

cash to pay off the obligations ahead of the two issues of bonds and the preferred stock as outlined. There is a schedule attached to the agreement with the Coast Line which gives estimates as to the amounts which will have to be provided. (Tes. 47–51.)

(Witness excused.)

B. L. Bugg was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

I am the receiver of the A., B. & A. Railroad properties; I was appointed receiver February 25, 1921. For about a year prior thereto I had been president of that carrier. Prior to that for the last five months of Federal control I was general manager. For the first five months of Government control I was vice president and general manager. For some time previous to Government control I
96 had been general manager and assistant general manager, and traffic manager, dating back to about 1912. Since 1912 I have been thoroughly familiar with the operating conditions and traffic on the A., B. & A. and with its relations to other railroad companies. I prepared a statement summarizing the testimony which I wish to give to-day.

The Atlanta, Birmingham & Atlantic Railroad Company, predecessor of the present Atlanta, Birmingham & Atlantic Ry. Company, was chartered in 1905, under the general laws of the State of Georgia, to construct a line of railroad or railway from Montezuma, Georgia, to Birmingham, Alabama, with a line branching off from that line to Atlanta, Georgia. The properties of the Atlantic & Birmingham Railway Company, the rail lines extending southeastward from Montezuma, Georgia, to Brunswick, Georgia, with branches to Waycross and Thomasville, Georgia, acquired as of May 1, 1906, were consolidated with the Atlanta, Birmingham & Atlantic Railroad Company, under the latter designation, and the building of the line from Montezuma, Georgia, in the direction of Birmingham, Alabama, and Atlanta, Georgia, proceeded with the completion of extensions as follows: Montezuma, Georgia, to Talbotton, Georgia, 44 miles, open for service February 12, 1906; Talbotton, Georgia, to LaGrange, Georgia, 49 miles, open for service March 3, 1907; LaGrange, Georgia, to Roanoke, Alabama, 24 miles, open for service Aug. 4, 1907; Roanoke, Ala., to Talladega, Alabama, 67 miles, open for service December 22, 1907; Manchester, Georgia, to Atlanta, Georgia, 78 miles, open for service April 14, 1908; Talladega, Alabama, to Pelham, Alabama, 50 miles, open for service September 6, 1908; from Pelham, Alabama, physical connection was made with the Louisville and Nashville Railroad, and trackage rights were obtained over that line, 18 miles, into the city of Birmingham,
97 Alabama. Pelham, Alabama, to Bessemer, Alabama, 14 miles, open for service January 10, 1910. Bessemer, Alabama, to

Birmingham, Alabama, 11 miles, open for service June 1, 1910; the road as completed extends easterly from Birmingham, Alabama, across northern Alabama into the State of Georgia, and the line extending south of Atlanta joins the Birmingham line at Manchester, Georgia, and continues southeasterly to the port of Brunswick, Georgia, on the Atlantic Ocean, with branch lines from Fitzgerald, Georgia, to Thomasville, Georgia, and from Sessoms, Georgia, to Waycross, Georgia. The total main line mileage is approximately 640 miles, of modern construction, built to handle heavy tonnage economically, with low grades and curvatures. It is laid, for the most part, with 80-pound rail, and is amply supplied with equipment to handle its present traffic. (Tes. 52–54.)

As completed the road connects, either directly, or by means of intermediate switching lines, with other carriers at practically all terminal and junction points.

The Railroad Company encountered financial difficulties before its completion, and was placed in the hands of receivers January 1, 1909, and so continued until January 1, 1916. A reorganization was effected at that time, and a previous capitalization of $35,000,000 of stock and $14,500,000 of bonds were wiped out. There stood up in this reorganization, however, $4,090,000 of the bonds of the Atlantic & Birmingham Railway which had been assumed in the purchase of that company by the Railroad Company.

The Atlanta, Birmingham & Atlantic Railway Company, successor under the reorganization plan, of the Atlanta, Birmingham & Atlantic Railroad Company, assumed the operation of the road as of January 1, 1916. Its capitalization was $30,000,000 common stock,
$4,090,000 of Atlantic & Birmingham Railway Bonds, and
98 $5,200,000 of income bonds, which latter were accepted by holders of receivers certificates that had been issued for the purpose of the completion of the building of the road into Birmingham, Alabama, and for other additions and improvements.

The road earned in 1916 net, after rentals, $700,000; in 1917, $500,000; under Federal control in 1918 it incurred an operating deficit of more than $500,000; and in 1919 a deficit of nearly $1,000,000; in 1920 (two months of Federal control, six months of guaranty period and four months on its own), the total deficit was $1,300,000. On February 25, 1921, a receiver was appointed in the United States Court for the Northern District of Georgia. Under the receivership the operating deficit has been gradually reduced until the year 1925 showed a deficit in net railway operating income of $71,500. However, these figures are distorted by an abnormal charge to the retirement of equipment to the extent of $200,000, and to an excess debit of equipment rents of approximately $150,000. The retirement of equipment was necessary because during the past several years it had not been properly maintained for the lack of available funds, and in the last analysis represents a deferred maintenance charge, extending back over a period of more than five years. The same

condition of equipment that required its retirement also contributed to the cause of excess debit of equipment rents. (Tes. 54–56.)

Of the 20 years that the railroad has been in existence it has been in receiverships more than twelve years, and under Government control and guaranty nearly three years, so that for practically three-fourths of the entire time of its existence it has been under the protecting wing of a Federal Court or of the Federal Government. Its inherent weakness is lack of traffic. When the road was first
99 built its principal traffic consisted of forest products, that is, lumber, cross-ties, turpentine, and rosin. The timber has been very largely cut down and a large part of the territory that it serves is in a state of industrial transition from lumbering to farming. The development of agriculture was making fair headway, along the lines of general farming, with cotton as the principal money crop, until about the year 1919, when the infestation by the cotton boll weevil became serious. Before the advent of the boll weevil the production of cotton in Georgia averaged approximately 2,000,000 bales annually. This was reduced in 1923 to a little over 600,000 bales. Last year, under unusually good crop conditions, the production had recovered so that it was a little more than 1,000,000 bales. It has become necessary under these conditions for the farming industry to revamp its methods. This is a slow process but fair progress has been made at many places in the territory, served by the road. For the last seven years our Agricultural Department has engaged most actively and effectively in a campaign for the diversification of crops. This has included as one of the essentials the raising of livestock. The razorback variety of hog has been practically eliminated and has been replaced by improved breeds. A breeder on our line won at the International Live Stock Show in Chicago, in 1920, the grand championship price for the best Poland-China boar, and at the same time a similar price for a Poland-China sow. In 1919, a breeder on our line won at the Chicago International Live Stock Show the grand championship price for the best Hereford bull. An entirely new crop in Georgia, which was introduced and promoted by our Agricultural Department, is tobacco. In 1920 this crop amounted to about 4,000,000 pounds, while in 1925, the tobacco production in
100 Georgia was 50,000,000 pounds, of which about 10,000,000 pounds were marketed at A., B. & A. stations. We have advocated and encouraged the planting of peach orchards and there are now more than 1,000,000 trees in our immediate territory, three-fourths of which are bearing fruit. We have recently been successful in getting some large growers of vegetables interested along our line near the coast. Many other money crops have been advocated by our agriculturist with varying success, but the local territory of the road as a whole is still economically subnormal.

There is, as a result, not sufficient local traffic and, doubtless it can not be secured for a good many years to come, to support the railroad. It has been necessary, therefore, to go far afield in the search for and solicitation of through freight traffic, that is, having origin and/or

destination beyond the lines of the railroad. The most fruitful field has been found in Florida, and the traffic, both into and out of that State, has shown the greatest percentage of increase.

It is conceivable that had the development of Florida proceeded at a normal rate, and had the transportation routes continued the same, in their physical characteristics and traffic relationships, the A., B. & A. Railway by its active solicitation supported by a satisfactory service, might have continued to increase its Florida traffic. This would be possible only so long as its competition as an intermediate carrier is with roads not affiliated with the originating and delivering lines in Florida. Owing to the rapid growth of the traffic of the State, however, the Florida lines have become active in developing new routes over their own lines, which when completed would leave the A., B. & A. high and dry as a part of a through route. For instance, the acquisition of the G., S. & F. by the Southern Railway has given a continuous route over the Southern Railway
101 rails into and out of Florida. The Seaboard Air Line has made public announcement of its intention to provide a direct route over its own rails between Atlanta and Florida, which will mean the handling of traffic over its own line between Atlanta, Birmingham, and Florida. The Atlantic Coast Line is connecting up its West Coast line or route. If the A., B. & A. should fail to be included in the plans of some one of the Florida lines it would be reduced to the level practically of a purely local railroad, because it could not hope to compete successfully as an intermediate carrier against through routes under common ownership and control.

The history of this road seems to point clearly to the fact that it can not be successfully operated as an independent property. To continue on this basis undoubtedly means recurring reorganizations, receiverships, and the eventual menace of being dismantled. The only permanent solution is to attach it to a strong system of railroads able to provide it with the traffic necessary to its support. Such an opportunity is offered in its proposed acquisition by the Atlantic Coast Line Railroad Company, and, in order to insure its permanency and preserve it as a common carrier making a substantial contribution to the development of the large area that it serves in the States of Alabama and Georgia, it appears to be incontrovertible that its acquisition by that company is from every point of view, desirable in the public interest. (Tes. 56–59.)

Mr. Ripley says the original idea for building the A., B. & A. Railroad was to connect up with the terminals in Atlanta. I do not know whether that is exactly true or not, but the underlying thought seems to have been the development of traffic from the Alabama coal and iron fields to the coast, connecting there with steamship
102 lines. The road was not built as a purely local road; it was built to handle through traffic. Its physical structure and capacity is not that of a purely local road through this section, but is that of a through route. I do not desire to dwell upon unpleasant memories as to the difficulties of the A., B. & A. in keeping the prop-

erties together and carry on operation during the receivership. I am familiar with the opinion of the Federal court, which has been introduced in evidence, filed upon the entry of the foreclosure decree, in which the court expresses itself as to the local need in the community served by the railroad for a continuous service. The road serves many communities that would be without transportation service at all, and then in many other communities its effect is a competing line; it is a competing line in those communities. Aside from the present plan I do not know of any solution of the difficulties which have come to my attention. I do not know of any other means whereby the continued operation of the railway can be accomplished other than a prolongation of the receivership. I am familiar with the return to questionnaire which has been filed by the applicant in Finance Docket 5454 and the schedules thereto attached; it was largely prepared in my office. I saw it and was in touch with it and the matters therein set forth are correct to the best of my knowledge.

The Seaboard has not been very definite in the statement of their plans. There is an article in the morning papers which states specifically they are providing themselves with a through line over their own rails between Atlanta and Florida, but just where that line will go through and the point it will pass, they have not made known. They also refer to connecting up the Florida lines so they can handle traffic over their own lines between Florida and Montgomery,
and they now use as a connecting link for the traffic the
103 Georgia, Florida & Alabama road. New routes would diminish
the ability of the A., B. & A. to secure part of the through traffic. (Tes. 59–62.)

CROSS-EXAMINATION

The morning newspaper announcement concerned the hopes and aspirations of the Seaboard, and mention is made that the route from Atlanta to Florida would go through Macon, Ga. The Southern and the Central, trunk line railroads, now operate between Atlanta and Macon. I do not recall that another link in the proposed route has lately been sought to be acquired by the Seaboard, which the Interstate Commerce Commission refused to approve. As to the railroad that the A., B. & A. most frequently encounters as a competitor at the points on its line: We are in stronger competition with the Central of Georgia and the Southern than any others. We touch the Louisville & Nashville at Birmingham, but I think we could hardly be said to be in competition with them at Birmingham. We touch them at Atlanta, too, but as a connecting carrier; we are in competition with the L. & N. at Talladega, Ala., and also the Southern Railway at the same place. I think those are the only points where we touch the L. & N. We touch the Coast Line at Brunswick, at Waycross, and we cross them at Offerman, Ga., and touch them at Thomasville, and cross them at Tifton. Our road is intersected by the Coast line only at two points—Tifton and offer-

man. At the other points we connect, we are a terminal line there and simply touch the point they also touch. At those points we are competitors. As to whether even at the places where they intersect we are competitors: Negligibly so at Tifton; at Offerman, we are not; there is nothing there except a railroad junction, a very small place. I think we encounter the Central of Georgia at
104 an equal number of points as the Coast Line, and perhaps the Southern Railway. I am sure we do as to the Southern, also as many points. Our principal western connection is not at Birmingham, Ala.; we handle western freight through Atlanta as well as Birmingham. At Birmingham our main connections are with the Illinois Central and Mobile & Ohio. We receive some business at Birmingham routed over the L. & N. I suppose we receive from the L. & N. business destined to any point on our line which is also served by the Coast Line, I don't know. I haven't definite knowledge of the traffic moving but the road is open. I understand there is an intercorporate relationship between the L. & N. and the Coast Line. The L. & N. connects with the Coast Line at Montgomery; south of Birmingham. Only at two places do we meet that line. I think we receive at Birmingham traffic destined to any point on the line equally served by the A. C. L. through its Montgomery route. (Tes. 62–65.)

With respect to the operating deficits of the prior period, the strike occurred on our line March 5, 1921. Operating the road under those strike conditions was not easy; it was very expensive. The operating difficulty and expense in 1921 is not altogether attributable to the peculiar conditions we faced in connection with the strike: the deficit was being figured before the strike. It was not materially larger after the strike than it was before. As far as we are concerned the strike was settled; we are operating the railroad. There has never been an agreement with the men who struck.

With respect to the matter of charges for the retirement of equipment, in the advances or items I mentioned covering the retirement of equipment, I do not think there was during the year 1925 a program of considerable added and extra maintenance of
105 equipment which expressed itself in the maintenance account; not in a cash maintenance charge. I think abnormal conditions are reflected almost entirely in the retirement. Concerning the figures on both foreign and home cars appearing in 1925 for freight car repairs at a figure approximately $90,000 greater than in 1924, or an increase of 65 per cent over the preceding year: The figures in repairs to foreign cars was $66,000, for which you see an offset in bills against foreign lines for repairs of $28,000, making those repairs cost more than we received for them; the total on repairs to foreign cars—the increase—the figures were more, but the total repairs to foreign cars was not more than we billed the connecting lines for.

Q. Do we understand that the increase from $153,000 in 1924 for freight car repairs to $234,000 in 1925, is to be explained by the added expenditures for repairs to foreign equipment in your charge?

A. The $63,000 is on foreign cars. (Tes. 65–68.)

We did not receive an equivalent sum back. We did not receive pay for all foreign cars; when a car is damaged on your line you repair it; we repaired them at our own expense. There is no separation between the cars repaired subject to billing and those for which we were responsible. It wasn't an abnormal charge for freight car repairs. Of course, in carrying on the program of rehabilitation there are some repairs which must go to the operating expenses. The greater part of the rehabilitation of equipment was accomplished through the retirement entirely of the old equipment from the books. Then when the equipment was rebuilt it went back on the books as new equipment, and charged to the capital account and not maintenance.

Q. Coming to the question of rebuilt equipment; coinci-
106 dentally were set up the retirement account and the account of rebuilt equipment, that was charged for as new equipment on the capital account—has that program been completed?

A. Not quite; almost.

In the total program about 500 cars covered by the retirement charge are involved. There were more than 500 cars retired. Not all the cars were rebuilt. In rebuilding the cars there were a large number unavailable for use at that time, and you will notice the debit car balance. Under the program, which will bring into service equipment of something like 500 new cars, it will have the tendency henceforth to decrease car hire that our road has been subjected to. As a matter of fact, for three months in 1926, the car hire shown for those three months is $71,000 against $92,000 for the three months of the previous year, a reduction of $20,000 in three months. All the equipment has been put in service except 100 flat cars. It is true that the actual charge for car hire varies from month to month according to the conditions of traffic. We had a gross income in connection with car hire a day from that source of about $180,000. In a measurably small way we have entered upon a program of roadway rehabilitation. As to whether the current operating account for the months in 1926 is beginning to reflect the undertaking on our part to make up some of the deferred maintenance of the roadways and structures, and those accounts seem to indicate a material increase over the previous years: It is due not entirely to increase of maintenance. There is the increased cost of labor and increased cost of cross-ties and lumber as compared to 1925.

We are doing some work at the Brunswick terminals; we have rebuilt only one shed and rebuilt no piers at all. We have made no
106A general repairs, but it was just removing one shed to rebuild it on the water front. It is a small expense which will be charged to the capital account, and the cost charged to main-

tenance. We are spending the sum of money in rehabilitation of the Brunswick terminals to try to increase the water-borne traffic to and from Brunswick to the east. As to whether we have any feeder connection at Brunswick, a water line, the Mallory Line or the Clyde Line, I believe, has one ship a week in there. The condition of that terminal is based upon the flow of traffic through the port over our line. We are hoping that these expenditures in developing the terminals will increase the traffic over our line. (Tes. 68–72.)

S. L. YERKES was thereupon called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

My name is S. L. Yerkes, of Birmingham, Alabama. I am interested in the manufacturing business at Birmingham, and am interested in the reorganization plan as proposed, and we have had a number of meetings and discussions and I wish to offer the resolutions passed by the board of governors of the Associated Industries of Alabama, which has a membership of between four and five hundred, located in forty-seven out of the sixty-seven counties in Alabama, and it represents one hundred and twenty-seven separate and distinct manufacturing and commercial concerns and organizations, employing more than 130,000 people in Alabama, with annual pay rolls in excess of $140,000,000, and with invested capital approximating $750,000,000, and this organization favors this plan.

I have another resolution passed by the Alabama Mining Institute representing the coal industry of Alabama, with an output of about 20,000,000 tons annually, employing 28,000 men, and is greatly interested in efficient transportation and favors this plan. (Tes. 72–73.)

107 I am a member of the chamber of commerce. I was not present when the resolution was offered. I am not a member of the board of governors. I am not an officer. I am a coal operator. I was requested to bring this resolution with me, the chamber of commerce knowing I was coming, with the Associated Industries and the Alabama Mining Institute resolutions. It is a resolution given to me and I was requested to present it to the examiner. I am to a considerable extent familiar with the railroad situation in Birmingham and Alabama. I know the relationship of the A., B. & A. lines to the L. & N. and the Atlantic Coast Line. I have been in business in Birmingham about 15 years. The A., B. & A. is looked upon in Birmingham as a weak institution, as one needing through traffic for its existence. I believe the ownership or control of the A., B. & A. by the Coast Line will make for its permanent existence. I think it will tend to make a successful line of transportation out of it. That is the general opinion of the chamber of commerce at Birmingham and the business interests at Birmingham.

(The resolutions of the Alabama Mining Institute, and of the Associated Industries of Alabama, were received in evidence and marked "Exhibits 14 and 15," respectively.) (Tes. 74–76.)

CROSS-EXAMINATION

As to our interest in the reorganization of these properties: The matter was discussed that probably the stockholders would suffer, but we felt it was for the best interest of the country and all concerned, and this plan, if permitted, would put the A., B. & A. on a sound basis and enable it to afford sufficient transportation for the people it served. I am not a stockholder myself. The names
108 of the gentlemen on the list were involved in this discussion. They were not stockholders that I know of. Outside of Mr. Woodward, who is a stockholder, I don't recall any one of the chamber I discussed it with who was a stockholder. He did not ask the passage of the resolutions in Birmingham that I know of, nor did he suggest it. I don't know that any particular detailed study has been made by these gentlemen with respect to the future earning power of the railroad; I know all of them feel that linking the A., B. & A. with the Atlantic Coast Line will be a good thing for the A., B. & A. and the people and communities served, because it would furnish money to rehabilitate the railroad and buy equipment and take care of the business which it has not been able to do with the possible exception of a short time during its history. Except in name there would be no A., B. & A. under the reorganization; it would become then the Coast Line System. In substance it would mean the obliteration of the A., B. & A. and the substitution of the Coast Line for it, which would be regarded as a favorable circumstance by the business interests of Birmingham. (Tes. 77–78.)

(Witness excused.)

E. M. Cole was thereupon called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

Here is a resolution by the Exchange Distributing Company of Birmingham, Ala., signed by its secretary, J. E. Keith, who was unable to come over and knowing that I was coming, representing another concern, he asked me to bring it and submit it.

(The exhibit mentioned was received in evidence as Exhibit No. 16.)

109 As a representative of the Alabama Iron & Steel Shippers' Conference I offer resolution drawn up by that conference and signed by Mr. A. J. Ribe, general chairman.

(The resolution mentioned was received in evidence as Exhibit No. 17.) (Tes. 79.)

(Witness excused.)

WILLIAM H. TURNER, jr., was thereupon called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

I have here a resolution drawn up by the directors of the LaGrange Chamber of Commerce, favoring this plan, and it was passed. It was endorsed by the directors at a regular meeting.

(The resolution mentioned was received in evidence as Exhibit No. No. 18.)

The people in LaGrange feel that the service of the A., B. & A. has been limited for a number of years, due to lack of funds, and the regular service has not been up to the standards of a standard road. I have no reference to the specific terms; the position that the average layman takes is that a road controlled or owned by the Coast Line would be a first-class railroad, and would serve the community better. This resolution as to better service need not necessarily be dependent upon the Coast Line operating these properties—any other first-class trunk line. In addition a number know more or less in a general way about the plan, and others know in a limited way about the financial condition of the road. This is not for the chamber of commerce, although a number of the members have expressed themselves this way, but I feel that this was a plan which would be feasible and the only thing in sight which would help us out in that territory.

110 There is another resolution here signed by the secretary of the LaGrange Rotary Club and passed at a meeting and in line with the other resolution, which expresses the hope that the present plan as proposed will go through.

(A copy of the resolution mentioned was received in evidence as Exhibit No. 19.) (Tes. 80–82.)

(Witness excused.)

FRED G. WARDE was thereupon called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

I represent the Brunswick Board of Trade, which, of course, represents the entire city of Brunswick, and we have suffered a great deal and are still suffering on account of the lack of facilities for the handling of shipments from points on the A., B. & A. to Europe and eastern ports, and at a meeting of the board of trade yesterday or the day before these resolutions were unanimously passed representing all the interests of Brunswick and we favor the purchase of the A., B. & A. by the Coast Line Railroad.

Just a moment ago this was handed me, and it was from Kiwanis Club, of Alma, Georgia, and is a resolution endorsing this proposition as they understand and signed by the Kiwanis Club.

(The resolutions mentioned were received in evidence and marked Exhibits Nos. 20 and 21.) (Tes. 83–83.)

(Witness excused.)

P. F. FITZGIBBONS was thereupon called as a witness, and having been duly sworn, testified as follows:

111 DIRECT EXAMINATION

I represent the Crisp County Board of Trade, of Cordele, Ga., and I have been asked to turn in the resolutions of the Kiwanis Club also.

(The resolution of the Crisp County Board of Trade was received as Exhibit 22, and that of the Cordele Kiwanis Club as Exhibit 23.) (Tes. 83.)

(Witness excused.)

HENRY H. TIFT was thereupon called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

My name is Henry H. Tift, of Tifton, Georgia. I have a letter here jointly signed by myself as president of the Tift County Board of Trade, and the president of the Kiwanis Club, of Tifton, Georgia. I also have a resolution passed by the Tift County Post, No. 21, American Legion, and I have been asked to present these. Also a large number of the young business men of the community are represented in these.

In view of the fact that Tifton is one of the two points where the Coast Line and the A., B. & A. cross you might say, you might call it a competitive point, I will be glad to answer any questions.

(The resolution of the Kiwanis Club, of Tifton, Ga., was received in evidence as Exhibit 24, and that of the American Legion Post of Tifton as Exhibit No. 25.) (Tes. 83–84.)

(Witness excused.)

J. H. MAYES was thereupon called as a witness and having been duly sworn, testified as follows:

112 DIRECT EXAMINATION

I have here a resolution from the Fitzgerald Chamber of Commerce and one of the directors of the First National Bank.

(The resolution of the chamber of commerce was received in evidence as Exhibit 26, and the letter from the cashier of the First National Bank, Fitzgerald, Ga., was received as Exhibit 27.) (Tes. 85.)

(Witness excused.)

H. H. THORNTON was thereupon called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

I have here a resolution passed by the Chamber of Commerce, of Talladega, Ala.

(The resolution mentioned was received in evidence as Exhibit 28.) (Tes. 85–86.)

(Witness excused.)

R. H. DAVIS was thereupon called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

My name is R. H. Davis. I am president of the city commission of Manchester, Ga. I have here a resolution passed by the city commission and signed by myself and the other members.

CROSS-EXAMINATION

I am not familiar with the financial terms involved in this proposed sale. The source of the information leading to some of
113 the conclusions expressed in the resolution concerning financial terms comes only from general knowledge of the proceedings appearing in the papers. I never at any time inspected the physical valuation of the properties apart from the earning valuation. I do not remember what the appraised valuation placed on it by the Federal Government was; I recall it was a number of millions of dollars. I became more familiar with the terms of the proposed sale here to-day than I was before. I have not followed it closely. At the time the resolution was conceived and passed I did not know the terms of the proposed sale; I do not know them now wholly. If there be contained in the resolution anything which indicates approval of the terms of the sale, you are to understand I had no information before me at the time and was not expressing any opinion of that kind. (Tes. 86–87.)

(Witness excused.)

(The resolution of the Manchester, Ga., board of commissioners was received in evidence as Exhibit 29.)

THOMAS A. DIXON was thereupon called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

I have here a resolution from the Coffee County Chamber of Commerce, and also a resolution from the Kiwanis Club, of Douglas, Ga.

CROSS-EXAMINATION

When the statement is made in the resolutions that absorption of the A., B. & A. by the Coast Line would be beneficial to the territory, I had in mind just general interests; the interest of the community
114 in the matter is that they hope for improved facilities and service. We are not particularly concerned as to how it comes about, except for the best interests of the A., B. & A.—the benefit of the company, including the bondholders principally be-

cause we feel they are more interested; on the idea they have more money invested.

(The resolutions of the Douglas Kiwanis Club and the Coffee County, Ga., Chamber of Commerce were received in evidence as Exhibits 30 and 31, respectively.) (Tes. 88–89.)

(Witness excused.)

B. L. Bugg resumed the stand and testified as follows:

As to the accounting treatment which was accorded to payment in 1925 of some taxes which had accrued in the past and were unpaid, so-called back tax:

The taxes are accrued on monthly estimates, and adjustment is made in the properties in the last month of the year, based upon the actual statements of the taxes from the different tax units, and the accrual is set up in the operating figures of each calendar year, of tax payable in that year. Where taxes have not been paid, when due, or are deferred, and payment is made, they do not enter into the operating accounts at all. It is merely a cash transaction, because when the statements are received, from the tax units, they are vouchered; if we have any cash to pay the taxes, the vouchers are released; otherwise they were held by the treasurer.

There is no item of deferred taxes, unpaid or back tax, carried in the current items; it affects only the cash account.

I think the Southern Railway acquired the G. S. & F.—began operation of it about five or six years ago. That is about the time of the receivership. As to the matter of the Florida lines, I said

115 if the Seaboard and Coast Line, or any through carrier develops projects in such a way as to leave the A., B. & A. out, we would be stripped of through traffic that we deem necessary to operation. In the determination of the policy it was taken for granted that the Interstate Commerce Commission would sanction extensions or alterations of the existing railroad map in such a way as would, in my opinion, cripple the A., B. & A. I think it would be a risky proposition to attempt to frustrate the plans of the other lines by pointing out that our road already furnished convenient facilities for much of that traffic. I presumed that they might succeed in their ventures and leave us out.

As to what is included in the figure of $600,000, shown as receivership, reorganization, and miscellaneous expenses and allowances:

I have no direct information of that item. My understanding is it is intended to cover the receivership expenses, fees, court costs, attorneys' fees, and also fees of the proceedings in connection with the mortgages and of the protective committees and reorganization committee. That is it in a general way. As to what the division would be between the different interests, I do not know.

I can not tell you if there will be filed later in the record a tabulation of these items.

I would like to get it clear in the record while on that point that I have never in my life owned a dollar's interest in any share of stock.

or bond, nor has anyone ever owned it for me or on my behalf, any interest whatsoever in any security or stock or bond of the A., B. & A. (Tes. 90–93.)

I was president of the railroad before the receivership. When I accepted the receivership it involved a little diminution in my personal income annually. I hope that there is included in this
116 $600,000 something to be paid to the receiver as compensation in addition to the allowance the court has been making during the receivership; that is with the court, however. The measure of it has not been settled. It is a matter in the discretion of the court as to the approximate sum to be appropriated for receivership compensation; it can not be set up except by the court. As to how much has been set up by those making the tabulation, you would have to ask the one who made it up. I don't know what amount they included; they did not inform me. I do not know how much has been set up for compensation of the reorganization committee or for counsel fees. I don't know how much has been set up for any other purpose than these. According to the published announcement of the plan, it is indicated that if approved by the Federal Government this road should continue to operate in its own name and as a separate organization. I made an announcement of the plan. No mention was made as to whether there would be a change in personnel; that remains with the Coast Line. It has not been decided; I do not know if it is in contemplation. I hope so.

During the period of six months before the announcement of this proposed reorganization I did not issue a formal statement concerning the earnings of the road. From time to time the reporters called on me and asked me about conditions, and how the road was getting along, and I talked with them in a general sort of way; but I did not give out figures or statements. They were not reporters of financial papers who called on me; usually it was local reporters. I did not know that they were later published in commercial papers and took the form of an interview by me as to the financial progress of the road. As to whether I observed the rising price which our stock was bringing on the New York market, during the period of
117 four or five months before the reorganization plan, I as a rule rarely paid any attention to the stock at all. Unless it was an unusual condition, I did not know about it.

Any statement I gave was without reference to the market conditions at all. I was not interested in the market. The reporters are always looking for news and were always looking for news from the A., B. & A., and they would come around occasionally, and ask how the road was doing and if it was doing better, and I would tell them, and that was as much as I would tell them. (Tes. 93–97.)

Any improvement in the road would be gratifying.

Once or twice or maybe oftener, when the reporters were around we were asked was there any prospect of lifting the receivership, and

usually I replied no immediate prospects in sight. That is usually the second question they asked. Up to the time this deal came on with the Atlantic Coast Line, there was never anything which could be tied to as basing the hope of an early lifting of the receivership.

I never said that the receivership would be lifted without reorganization to anybody; I do not recall that such a statement was broadcasted. I never gave out any such information.

With reference to the Florida situation and as to whether the Florida tonnage is continuing on something like the 1925 basis:

Well, there was a considerable interruption in the Florida traffic in the latter part of 1925, by the embargoes; we suffered considerably on account of the embargoes. Now, recently there has been a modification of the embargoes, and I think perhaps have been almost entirely removed now, so the traffic is moving practically normal. It is not in a very considerable volume greater than it had been moving.

118 For the three months of 1926, there was an increase in the gross income of $87,000 over 1925. By removing the embargoes, the changed conditions in Florida did not adversely affect us, but it helped us. I have not claimed we were adversely affected by the embargo. If the court rendered an opinion in which it was stated that by reason of the boom in Florida and the recent collapse it had adversely affected this road, I would not give an opinion contrary to the court. I have not made an analysis at a recent period, but we do know we have had an increase in the movement of fertilizers in the local territory of the road. I do not know how much is due to local, and how much to Florida traffic, if any. Whatever subsidence there has been in Florida I don't think has adversely affected us up to this time; in other words, the prosperity of Florida was an advantage to our road. In the application in No. 5454, which recites that I am the receiver and in possession of and now operating the properties, except such as have been sold by order of the court, there is included in the exception vacant property for industrial purposes that we sold off from time to time—property that is noncarrying property. It went on deposit with the trustees in lieu of the property—the mortgaged property sold in accordance with the terms of the mortgages and with the order of the court in each case. The exception was also intended to cover the disposition of the Mulga branch, which is an industrial track in the Birmingham district. (Tes. 97–100.)

(Witness excused.)

119 J. L. EDWARDS was thereupon called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

My name is J. L. Edwards; address, Brown Building, Atlanta, Ga. I am assistant to the receiver of the Atlanta, Birmingham & Atlantic.

I was traffic manager of the A., B. & A. and vice president from the 1st of March, 1920, and am still with the corporation as vice president. I am thoroughly familiar with the operations and policies of the A., B. & A., with its traffic, operating and other activities. I have prepared information about the communities which are served exclusively by the A., B. & A. Railway.

There are a large number of small cities, towns, communities and agricultural sections which have no other railroad than the A., B. & A. I am filing as Exhibit No. 32, a statement of stations at all of which we have agents, and which are not served by any other railroad. They serve agricultural areas to a large extent, and there are also a number of manufacturing industries.

(The statement mentioned was received in evidence as Exhibit 32.)

This shows forty-three agency stations which are exclusively served by the railroad.

I am filing as Exhibit No. 33 a list of industries served by the rails of the A., B. & A. at all points on its line, which includes a large number of industries at flag stations wholly dependent on the A., B. & A. The first point on this list is Alma, Georgia. There is a ginnery, and ice house, and the ice house has a capacity of fifty cars a year, and a live stock pen, or two of those, and a naval stores plant, and petroleum products plant, gasoline station, two planing mills, a stave mill, tobacco sales warehouse, and two wholesale groceries with a capacity of fifty and twenty-five cars a year each. I won't go into the details of the list. I call attention to Manchester, Georgia, at which there is a 25,000 spindle cotton mill, and other industries and the list will speak for itself.

(The list mentioned was received in evidence as Exhibit 33.)

It will be noted that at Atlanta, Birmingham, Brunswick, and indeed at all larger competitive points there are many important industries which are served by the tracks of the A., B. & A. and in most cases are dependent exclusively on the A., B. & A. for terminal services.

As nearly as we can estimate approximately 200,000 people in towns and communities are dependent exclusively on the A., B. & A. for railroad facilities and more than 1,000,000 people at all points on our line use it substantially for railroad transportation. (Tes. 100–103.)

I have prepared a statement showing the respective deliveries of freight traffic in connection with the Atlantic Coast Line, the L. & N., and the N. C. & St. L. railroads for the years 1922, 1923, 1924, and 1925.

I will file this statement which shows in round figures that in three years our receipts from the Atlantic Coast Line, L. & N., and N. C. and St. L. roads, our principal connections in the A. C. L.-L. & N. group, increased $495,000—73.8 per cent.

During the same period our deliveries to the same lines increased $254,000—37.5 per cent.

If we add together the receipts and deliveries it gives the total of $2,097,000 in 1925. There is, however, a large duplication
121 amounting to approximately $500,000. Northbound Florida perishables for instance, received from the Atlantic Coast Line at Offerman and counted in receipts from A. C. L., and later delivered to L. & N. at Atlanta, would be counted again in the deliveries to L. & N.

It is clear, however, that allowing for duplication the interchange with this group of roads, amounts to about $1,500,000 a year, and that is about one-third of the total freight revenue of the A., B. & A. If these lines at any time made other arrangements for the routing of traffic, particularly between Atlanta and Birmingham on the north, and Offerman, Waycross, and Thomasville on the south, and undertook to solicit shippers and consignees against A., B. & A. routing, this volume of traffic interchanged would be greatly diminished to an extent which would be ruinous to the A., B. & A.

(The statement mentioned was received in evidence as Exhibit 34.)

I have prepared what is known as a four-way statement showing the freight traffic handled by the A., B. & A. for 1922, 1923, 1924, and 1925, which I now file.

This statement divides our freight traffic—I mean divides our freight revenue for 1922, 1923, 1924, and 1925, into four parts: 1st. That business which both originates and terminates on our line. 2nd. Business which we originate and deliver to connections. 3rd. Business which connections deliver us for stations on our line. 4th. Overhead business, that is, originating on connecting lines, handled by A., B. & A., as an intermediate line, and delivered by us to connecting lines.

This shows that in three years our local business, that is, from station to station, increased only $46,000—5.8 per cent.

122 The business originating at our stations and delivered to connections increased in three years, 37.1 per cent. These increases reflect, of course, the conditions in our own territory.

When we come to business from connections to A., B. & A. stations, the increase in three years was 59.1 per cent, and the increase from connections to connections with the A., B. & A. intermediate, was 67.5 per cent.

This statement shows the necessity of the A., B. & A. having a large volume of traffic from connecting lines in order to exist. It also shows the weakness of the A., B. & A. as a traffic producer.

It would have been utterly impossible to have shown such large increases in business secured by solicitation from points on connecting lines without a large measure of friendly cooperation on the part of our connections. (Tes. 103–105.)

(The statement mentioned was received in evidence as Exhibit 35.)

I have prepared a statement of our revenue on Florida freight traffic, for the years 1916, 1917, 1922, 1923, 1924, and 1925, which I now file.

The statement shows using round figures that our whole revenue on traffic to and from Florida points in 1916 was $316,000, which increased in 1925, to $1,177,000, the increase being $861,000, over 271 per cent. This is far the greatest increase in any class of our earnings.

Our interchange with the Coast Line increased $532,000, and with the Seaboard $340,000. Our interchange with the G. S. & F. decreased $12,000.

Comparing 1925 with 1922, our interchange with the Coast Line increased $224,000, with the Seaboard $222,000, and with
123 the G. S. & F. $1,000. The total increase over 1922 was $447,000, or 61 per cent.

The total of our earnings on traffic to and from Florida in 1925, $1,177,000, was 26 per cent of our entire freight earnings in 1925. All but $13,000 of this was interchange with the A. C. L. and S. A. L., constituting over 25 per cent of our freight earnings.

It should be noted in connection with the figures of interchange with the Atlantic Coast Line at Offerman that a large part of the business received from the Atlantic Coast Line at Offerman appears in statement previously filed in our deliveries to the L. & N., and N. C. & St. L. Likewise that a large part of the traffic shown in our deliveries to the Atlantic Coast Line at Offerman is included in the deliveries to us at Atlanta and Birmingham from N. C. & St. L. and L. & N.

The point is that that shows the business which largely had either origin or destination on the Coast Line, could have been controlled against our routing by the Atlantic Coast Line, if they had endeavored to do it in their solicitations.

It should be stated that these figures are estimated, as it would be a large undertaking to show exactly what our revenue on Florida traffic was at any junction for a given time. We do know exactly the revenue on freight delivered to or received from each connection at each junction point. However, take Offerman for instance, a certain part of the business interchanged is to and from Savannah and points East. A careful estimate has been made based on tests for representative periods to determine how much of the total interchange was to and from Florida points, and our estimates are based thereon. The same method has been applied to Thalmann and Cordele, and the results ascertained are substantially correct. (Tes. 105–107.)

124 (The statement mentioned was received in evidence as Exhibit 36.)

I have prepared a statement showing the result of passenger operations on the A., B. & A., and in explanation of the statement, I will say that in the year 1925, the total passenger earnings of the road were $541,828.44, only 9.95 per cent of gross earnings. This was a decrease against previous year of $23,753.26, and was only $847.00 per mile of road for the year.

The passanger train service is purely local, the road having been unable to arrange through train service of any kind with connecting lines. It is minimum service which can be operated as to the number of trains and the number of cars.

We operate between Atlanta and Waycross two night trains, one in each direction, and two day trains, one in each direction. We operate between Manchester and Birmingham two trains each way, which broadly speaking connect with trains from Atlanta to Waycross. Then we operate on the Thomasville branch one train each way a day. On the line from Nicholls to Brunswick, one train each way, a day, and between Brunswick and Thalmann a short turn connecting with through trains on the Seaboard at Thalmann. I say further on these trains pay their out-of-pocket cost. If the passenger earnings should further decrease probably it would be our duty to go before the State commission and endeavor to further decrease the service. We feel now it is the minimum train service.

A statement is submitted showing for every year since 1908 to 1925, inclusive, passengers carried one mile, and passenger miles per mile of road. The density of passenger traffic increased from 34,538 passenger miles per mile of road in 1910 to 54,879 in 1920.
125 Since then large decreases have been shown, account of automobile and bus competition, and in 1925 passenger miles per mile of road was 25,759, a small decrease under 1924, and far less than any year between 1911 and 1920.

Our passenger business as a local line seems hopeless. The does not more than pay the out-of-pocket cost of operating the trains. The passenger earnings per train mile in 1925 were 64.3 cents. The earnings per passenger car mile were 26.8 cents.

Another statement is submitted showing passenger revenue per mile in 1925 of other roads in the southeast, which enjoy through passenger train service in addition, of course, to their local service. While the per car mile earnings of the A., B. & A. were $847, the A. & W. P-W. of A. earned $7,318, Atlantic Coast Line, $4,507; Central of Georgia, $3,175; G. S. & F., $4,807, etc. The passenger earnings of these other roads are a substantial contribution to the gross and net revenue, whereas on the A., B. & A. as just stated, the passenger revenue is all absorbed in the cost of running the trains. (Tes. 107–109.)

(The statement mentioned was received in evidence as Exhibit 37.)

CROSS-EXAMINATION

I say that the development of through passenger service has not been practicable because we have not been able to arrange with the connections or connecting lines. They were not willing to enter into the arrangement. (Tes. 109–110.)

(Witness excused.)

C. McD. Davis was thereupon called as a witness and having been duly sworn, testified as follows:

126 DIRECT EXAMINATION

My name is C. McD. Davis; address, Wilmington, N. C., position, freight traffic manager, Atlantic Coast Line Railroad Company.

I entered the service of the Wilmington & Weldon Railroad Company, predecessor of the Atlantic Coast Line Railroad Company, March 1, 1893, and have been employed since that time by the Atlantic Coast Line or by lines which comprise that system. The Plant System of Railways and Atlantic Coast Line Railroad Company were consolidated on July 1, 1902, on which date I was made chief clerk in the traffic department at Wilmington. On January 1, 1906, I was made assistant general freight agent of the system, with office at Wilmington, and in November, 1911, general freight agent of lines south of Charleston, i. e., the lines which had comprised the Plant System of Railways, with office at Savannah, Georgia; in 1916 I was made general freight agent of the system, with office at Wilmington. During the period of Federal control, I was a member of the southern freight traffic committee of the United States Railroad Administration, on staff of regional director, southern region, Atlanta. At the end of Federal control, I was furloughed from the exclusive service of the Coast Line and served as a member of the southern freight rate committee at Atlanta, the same being the machinery through which rate changes in southern territory are handled for account of all southern lines, including the Atlantic Coast Line. On January 1, 1921, I returned to the service of the Atlantic Coast Line as assistant freight traffic manager, and in August, 1925, was made freight traffic manager, which position I now hold.

Stating in a general way the history of the interchange relations between the Atlantic Coast Line and the present A., B.
127 & A. and its predecessor companies, it should be kept in mind that the several short railroads in South Georgia that have gone to make up the present A., B. & A. Railway were each originally constructed largely as local lumber trams or railroads, and for the purpose of getting out the virgin tracts of timber and naval stores in south Georgia. Going back to the days of the first of these roads, the Waycross Air Line Railroad, which ran from Waycross, Georgia, to Sessoms, Georgia, a distance of 25 miles, was a local connection of the Plant System of Railways (now a part of the A. C. L. Railroad) at Waycross, as early as 1890. The Waycross Air Line Railroad was completed into Fitzgerald, Georgia, in 1901, a distance of approximately 70 miles, and continued to be a local connection of the Plant System and subsequently of the Atlantic Coast Line Railway, following consolidation of the two latter lines which was accomplished effective July 1, 1902. On November 27, 1901, the corporate title of the Waycross Air Line Railroad was changed to

the Atlantic & Birmingham Railroad, and during the period November 27, 1901, to the spring of 1903, the latter company extended its rails from Fitzgerald to Montezuma, Georgia, a distance of approximately 68 miles, and in addition acquired another lumber road, known as the Tifton & Northeastern Railroad, running from Tifton, Georgia, to Fitzgerald, a distance of 25 miles, and also secured still another lumber road known as the Tifton, Thomasville & Gulf Railway, extending from Tifton to Thomasville, Georgia, a distance of 55½ miles. The Brunswick & Birmingham Railroad, extending from Brunswick, Georgia, to Nichols, Georgia, and from Bushnell to the Alapaha River, was also acquired by the Atlantic & Birmingham Railroad and represented mileage of 120 miles. At conclusion of these several consolidations the total mileage of the Atlantic &
128 Birmingham Railway was approximately 338 miles. Before these consolidations the Atlantic Coast Line Railroad interchanged local traffic with the Tifton & Northeastern Railroad at Tifton, Georgia, with the Tifton, Thomasville & Gulf Railway at Tifton and Thomasville, and with the Brunswick & Birmingham Railroad at Offerman, Georgia, and after these three lumber roads were taken over by the Atlantic & Birmingham Railroad, local traffic continued to be interchanged with the new corporation at Tifton, Thomasville, Offerman, and Waycross, respectively. The business interchanged with these roads was largely traffic originating locally on such lines, and consisted mostly of lumber, naval stores, cotton, and watermelons produced along these roads, and inbound movements of food products, fertilizer, and supplies. There was no interchange of through or overhead traffic with these roads, nor in fact was this practicable, because of the absence of connections on the western end of these roads. (Tes. 111–114.)

In April, 1908, the Atlanta, Birmingham & Atlantic Railroad, which had succeeded the Atlantic & Birmingham Railroad, began to handle traffic to and from Atlanta, although its Atlanta line was not put in complete operation until June 21, 1908. On September 6, 1908, the main line of the Atlanta, Birmingham & Atlantic Railroad was extended from Talladega to Pelham, Alabama, a distance of 49.6 miles, and on same date trackage rights were leased from the Louisville & Nashville Railroad Company from Pelham to Birmingham, Alabama. Entrance into Atlanta and Birmingham enabled the A., B. & A. Railroad to handle overhead business to and from the west in competition with lines leading east of Birmingham and south of Atlanta, such as the Central of Georgia and G. S. & F. Railways. Previous to the opening of its lines into Atlanta
129 and Birmingham, the A., B. & A. had no through route in connection with the Atlantic Coast Line for overhead traffic between the West and Jacksonville and Florida points south thereof, because the use of the A., B. & A. route was not practicable on business handled by the Coast Line until the A., B. & A. reached Atlanta or Birmingham.

As result of extension of the A., B. & A. into Atlanta and Birmingham, thus placing it in position to join with the Coast Line in the handling of through traffic to and from the West, a conference was held between traffic officials of the Atlanta, Birmingham & Atlantic Railroad and Atlantic Coast Line Railroad in Atlanta on October 20, 1908, for the purpose of discussing establishment of through routes via the A., B. & A. The result of this conference was that effective November 1, 1908, a new through route was opened via Tifton, Georgia, in connection with the A., B. & A. on traffic destined to or originating at Jacksonville and Florida points south thereof. This action by the Coast Line placed the Atlanta, Birmingham & Atlantic Railroad on a parity with other connections of the Atlantic Coast Line, and gave it an equal opportunity to participate in the movement of traffic to and from Florida points. The opening of this route meant a great deal to the A., B. & A. Railroad, inasmuch as it enabled that line to participate for the first time in the large northbound movement of fruits and vegetables, the major portion of which traffic was local to the Atlantic Coast Line in Florida. In other words, this route opened up to the A., B. & A. all the important local territory of the Coast Line in Florida, as well as the important territory served by the Florida East Coast Railway, on traffic routed via the Coast Line at Jacksonville.

On February 3, 1909, the Atlanta, Birmingham & Atlantic Railroad, through Mr. W. H. Quigg, then its general freight
130 agent, made request upon the Atlantic Coast Line to change the general point of interchange from Tifton to Offerman. The reason given in support of this request of the A., B. & A. was the fact that the special train service it was necessary to render between Fitzgerald and Tifton to make connection with the Atlantic Coast Line trains was very expensive, and that from a transportation point of view Tifton was very undesirable as a junction point for the interchange of traffic with the A. C. L. The A., B. & A. stated that if Offerman would be made the general point of interchange much better through service could be given than was practicable through Tifton. Offerman is located on the main line of the A., B. & A. and traffic handled through that point would be taken care of by the main line trains instead of being set out and handled over a branch line as was the case in connection with interchange when made at Tifton. After considering the matter, the A. C. L. Railroad agreed, effective March 22, 1909, to change the general point of interchange from Tifton to Offerman, and Offerman continued the general point of interchange except during period of Federal control, when by instructions from the regional director the interchange point was temporarily changed to Waycross, but was again transferred to Offerman at the termination of Federal control.

As to whether there has been a steady growth in the interchange of traffic with the present A., B. & A. Railway and its predecessors

since the through route to and from Florida was opened November 1, 1908:

I am offering an exhibit showing deliveries in net tons by the Atlantic Coast Line Railroad to the A., B. & A. Railway from July 1, 1907, to date, with the exception of the period of Federal con-
131 trol, and the receipts by the Atlantic Coast Line Railroad from the A., B. & A. in net tons for the same period. This is my Exhibit Number 38. These tonnage statistics are separated as between competitive and local traffic so as to show that the preponderance of traffic received from or delivered to the A., B. & A. Railway has been of a competitive nature. The second page of this exhibit also shows the number of carloads of Florida fruits and vegetables that have been delivered to the A., B. & A. at Offerman for seasons 1912–1913 to 1925–1926, the figures for the last season named only covering movement from September 1, 1925, to March 31, 1926, whereas other seasons shown represent movement from September 1st to August 31st. The large increase in the movement of Florida fruits and vegetables during the Federal control period seasons of 1918–1919 and 1919–1920 over other seasons is explained by the fact that the regional director ordered that all perishable traffic handled by the Atlantic Coast Line Railroad and moving through the Atlanta gateway be routed via A., B. & A., and delivered to that line at Waycross. The movement via the A., B. & A. during the current season shows a decrease as compared with the previous season, both because the season has not ended, and further because the perishable movement from Florida this current season is off to the extent of at least 20,000 cars. (Tes. 114–118.)

As indicative of the extent to which the A., B. & A. now handles the perishable traffic originated or handled by the Atlantic Coast Line from the State of Florida, mention is made of the fact that the A., B. & A., while competing with nine other routes for the traffic destined to the west and southeast, secures approximately 20 per cent of the total movement and is the second largest handler of this traffic, securing more even than the route through Montgomery in
132 connection with the A. C. L.'s allied line, the L. & N. R. R.

Professor Ripley in his report on Consolidation of Railroads, 63 I. C. C. 455, referred to the fact that the marked weakness of the Atlantic Coast Line-Louisville & Nashville system is the defect in the lack of connection afforded between the two great wings, eastern and western, through a connection across the whole middle of Georgia, between Atlanta and Waycross. He further said, page 543: "There was no north-and-south line between Montgomery on the west and Savannah on the east; and this great system remains to-day dependent upon interchange with connecting lines for the maintenance of direct through service between Jacksonville, Atlanta and Cincinnati." The commission adopted the suggestion of Professor Ripley and assign the A., B. & A. to System No. 11—Atlantic Coast Line-Louisville & Nashville, without alter-

native inclusion in any other system. The commission in its decision in the Clinchfield Lease Case, 90 I. C. C. 131, decided June 3, 1924, referred to the chief need of the Coast Line-L. & N. system as being a line from Atlanta in a southeasterly direction to a connection with its lines in southern Georgia and Florida.

In order that the deficiency remarked upon by Prof. Ripley may be clearly seen and understood, and further, so that it may be understood how this will be remedied if the application to secure control of the A., B. & A. is granted, I am filing two maps as my Exhibit Nos. 39 and 40. The first map, Exhibit 39, shows routes between south Georgia, on the one hand, and north Georgia points, as well as Nashville and Ohio River crossings, on the other, via lines of the A. C. L. Railroad and affiliated lines, the C. & W. C. Railway and Georgia Railroad, on the one hand, and the A. C. L. Railroad and affiliated lines, the West of Alabama, A. & W. P., L. & N. and N. C. & St. L., on the other. The second map,
133 Exhibit 40, shows the routes of the A. C. L. and affiliated lines between south Georgia points, on the one hand, and north Georgia points, as well as Nashville and Ohio River crossings, on the other, as they will exist if the application is granted. Made a part of this second map is statement showing distances between Jacksonville, Florida, and important points as they exist to-day over the rails of the A. C. L. Railroad and affiliated lines, and as they will exist if the pending application is granted.

As to reports pointing to the fact that the Seaboard Air Line has plans in mind for connecting its River Junction-Jacksonville line, Montgomery-Savannah line and Birmingham-Atlanta line, by means other than the use of the A. B. & A.:

At the hearing in the Clinchfield case, Finance Docket 3131, Washington, D. C., September 26th, 1923, Mr. C. R. Capps, 1st vice president, Seaboard Air Line Railway, pointed to the need of a connecting link between the A. C. L. Railroad-L. & N. Railroad system (page 569 of transcript Finance Docket 3131) stating that the deficiency of this system is the lack of a line from Atlanta in a southeasterly direction to connection with its lines in south Georgia and Florida.

While having no authentic information as to what the definite plans of the Seaboard Air Line really are, according to the press, Mr. Warfield, president of the S. A. L. Railway, in an announcement made Baltimore, Maryland, February 16th, 1926, to stockholders of the S. A. L. Railway, stated:

"The new construction, leased lines, cut-offs and trackage rights will give the Seaboard system its third line of railroad to Tampa, St. Petersburg, intermediate, and other Florida points and a new short main line to and from these points, opening up new gateways via the West Coast, Perry (Florida), Albany (Georgia), Montgomery (Alabama), and Birmingham (Alabama), to the
134 West; and a short line to Atlanta (Georgia), Macon (Georgia), and intermediate points, also a short line from Atlanta

via Macon to Jacksonville, Florida, shortening the Seaboard's present haul via Savannah; and the shortest line from Atlanta via Macon to Savanah, Georgia. (Tes. 118–121.)

"This opens up a new and important short-line route from the West via the western gateways of Birmingham and Montgomery, Alabama, also from Atlanta, Georgia, via the proposed Inglis-Dunnellon-Wildwood cut-off, to West Palm Beach, Palm Beach, Miami, Homestead, Florida City, and other important points on the East Coast and in the ridge country of Florida.

"Thus will be realized the Seaboard's long contemplated plan for a connection between its Atlanta-Birmingham line and its Savannah-Montgomery line and its Florida lines; the new line will also materially relieve the Jacksonville-Tampa main line to the East and West. The new construction, together with the cut-offs, leased lines and trackage rights, in conjunction with other Seaboard lines, will insure the prompt handling of Florida's growing traffic by the Seaboard system to all points."

From subsequent press reports and information received from other sources, it is inferred that one of the routes being considered by the S. A. L. Railway, through the lease or purchase of existing lines and construction of the indicated gaps, is from Perry, Florida, to Quitman, Georgia, via the South Georgia Railway; thence by construction from Quitman to Iona, Georgia, to a connection with the Georgia Northern Railway; thence via the Georgia Northern Railway to Albany, Georgia; thence via the Georgia Southwestern & Gulf Railroad from Albany to Cordele, Georgia; thence by construction from Cordele to Fort Valley, Georgia; thence by trackage rights or lease via the Southern Railway's Atlanta-Fort Valley line
135 to Atlanta. The second projected line is apparently the construction of a line on the old right of way of the G. C. & P. Railroad from Warsaw, Georgia (on the S. A. L. Railway between Savannah and Everett, Georgia), to Glenville, Georgia; crossing the A. C. L. Railroad at Ludowici, Georgia; thence via the Collins & Glennville Railroad to Collins, Georgia; thence over the S. A. L. Railway's present line to Vidalia, Georgia, and thence via the already owned or controlled line of the Macon, Dublin & Savannah Railroad to Macon, Georgia; thence by construction, or use of the old Macon & Birmingham Railroad right of way, to a connection with the Southern Railway's Atlanta-Fort Valley Line at a point near Yatesville, Georgia. Of course I have no authentic definite information respecting those proposed S. A. L. Railway routes and am submittingly only such information as we have had, mainly from press reports.

I have prepared two additional maps which are submitted as Exhibit Nos. 41 and 42. The map marked "Exhibit No. 41" shows the present routes between south Georgia and north Georgia over the lines of Atlantic Coast Line and its affiliated lines, the C. & W. C., Georgia Railroad, W. of Alabama, A. & W. P., L. & N., and N. C. & St. L., as compared with the routes of the Seaboard across the State

of Georgia as in contemplation and located according to such information as is available.

This map, in addition to showing the plans of the S. A. L., make it advisable for the Coast line-L. & N. system to assure itself of favorable permanent routes across the State of Georgia, also clearly illustrates the fact that if and when the Seaboard carries forward its announced plans and acquires the routes here mapped out, or other routes that will serve practically the same purpose, it will eliminate
the necessity of the S. A. L. in future utilizing the A., B. & A.
136 as a connection and the necessity of securing traffic for these
new routes would point to the fact that the Seaboard may in future work against the A., B. & A.

The fourth map, Exhibit No. 42, shows the routes across the State of Georgia of the A. C. L. Railroad and its affiliated lines should this application be granted and it be permitted to secure control of the A., B. & C., and how this acquisition would preserve the status between these two competing systems.

As to whether the situation of the Atlantic Coast Line Railroad Company, which largely secures fuel coal for use on its line in Georgia and Florida mainly from Alabama mines, which it does not reach with its own rails or via a very direct route, will be improved by securing control of the A., B. & C.:

While the actual coal mines are not reached by the A., B. & A., through terminal service it is in position to handle coal, and there would be afforded a direct and more economical route for handling coal (commercial as well as railroad fuel) to south Georgia and Florida points than is now available to the A. C. L. Railroad. It would assure this south Georgia and Florida territory of adequate and quicker service on this traffic. The A., B. & A. at one time handled a considerable volume of the A. C. L. Railroad's fuel coal, but retired from participation back in the year 1920 on account of its then exceedingly high operating costs, but it will probably be advisable to once more turn some of this traffic to that route.

With the support of the Atlantic Coast Line Railroad, the former A., B. & A. Railway property is assured of continued existence and the people and industries served by it are assured of permanent
and adequate transportation service. As an independent line
137 its continued existence was and is at least a matter of doubt,
for the reported plans of the Seaboard Air Line Railway would seem to contemplate the minimizing the A., B. & A. as factor in the handling of business originated on or destined to points on the Seaboard Air Line Railroad. Should circumstances in future require the A. C. L. R. R., and its present affiliated lines, the N. C. & St. L. and L. & N. to seek an affiliated or controlled connection across the State of Georgia other than the A., B. & A. Railway, and as a result there should be diverted from the A., B. & A. Railway, not only a portion of the tonnage now interchanged by it with the Seaboard Air Line, but also a large portion of that interchanged with

the A. C. L., L. & N., and N. C. & St. L., the future of A., B. & A. would indeed be dark.

As indicating the importance of the A., B. & A. being assured of a continuous existence not only to the communities and industries it serves, but also to the pubic generally, and the transportation system of the country as a whole, the commission is reminded of the important part the A., B. & A. Railway played in relieving the traffic congestion that grew out of the floods of January and February, 1925, that swept away the bridges, approaches, and trestles over and adjacent to the Altamaha River in Georgia and put out of business for many days the normal routes of the A. C. L. and S. A. L. to and from the East. (Tes. 121–125.)

(The statement mentioned was received in evidence as Exhibit No. 38 and the map as Exhibit 39.)

The lines in red show the Coast Line, and the blue lines the affiliated ines, and the A., B. & A. in yellow.

(Other maps were received in evidence as Exhibits 40, 41, and 42.)

138 CROSS-EXAMINATION

I practically said that both Professor Ripley and Mr. Capps have expressed the view that the great glaring gap in this Walters system comprising the Coast Line and the L. & N. is the absence of such a route as the A., B. & A. If the Seaboard is permitted to develop the projects it has announced, in all probability it would not use the A., B. & A. to the extent it now does, and should the Seaboard construct its own lines across the State, or should the Coast Line for any reason in the future, with the present affiliated lines seek its own lines across the State, we think the A., B. & A. would suffer materially, not only from the loss of diverted business but the loss of other business. The developing plans of the Seaboard is not the controlling reason why it is important for the Coast Line, in protecting its own interests, to acquire a transstate route of that character. I do not think it would be of any material importance to the Walters interests in acquiring a transstate route of that character by reason of the projects the Seaboard has announced; I think our plans are independent of the Seaboard's in that respect. It would make practically no difference to us whether the Seaboard did or did not develop its projects. We have connections we use to and fro, to get to and from Atlanta and Jacksonville; we use such routes as the Central of Georgia, on the A., B. & A. through routes which lead us to Birmingham and Atlanta. Our plans are not dependent upon the plans of the Seaboard. I don't think the development of the Seaboard's projects in any way makes it important to the Walters interests to acquire a transstate route. I concur in the conclusions of Professor Ripley and the comments made in the C. C. & O. case. (Tes. 126–127.)

139 (Witness excused.)

Colloquy

Exam. DAVIS. This three and a half million the Atlantic Coast Line is to advance, should be advanced from the current funds?

Mr. ELLIOTT. Yes.

Exam. DAVIS. It would not require any additional financing by the Atlantic Coast Line?

Mr. ELLIOTT. No; it requires no additional financing. The amount referred to, in round figures, is shown by Exhibit A, a part of the contract between the Atlantic Coast Line and the bondholding committee—it is $3,677,500. That is the admitted amount of cash that would be required to lift the receivership.

Exam. Davis. I understand it would be around that. Now, the Coast Line assumes under the agreement to guarantee the dividend on the preferred stock—is there power under the charter to guarantee it?

Mr. ELLIOTT. Yes; there is power under the charter to guarantee—the opinion of counsel has been filed.

* * * * * * *

Exam. DAVIS. If the dividends are not earned, they would come out of the Coast Line's treasury?

Mr. ELLIOTT. Yes.

Exam. DAVIS. To whom is the money to be paid?

Mr. ELLIOTT. Directly to the holders of the preferred stock. Distribution would have to be made by the new company and we guarantee the operations of the new company, and we pay it out of the treasury. When you referred to an endorsement upon the stock, you had in mind a signed endorsement, did you?

140 Exam. DAVIS. Yes.

Mr. ELLIOTT. There will be no signed endorsement on the stock referred to. The details are all set out in the contract between the Atlantic Coast Line and the bondholders' committees filed as Exhibit No. 5. (Tes. 129–132.)

(Examiner Davis ruled that the decision of the commission in the Southern Class Rate Case, Docket 13494, will be admitted by reference, and considered a part of the record.) It was likewise stipulated that in considering the case the commission might refer to the annual reports filed with the commission by the A., B. & A. from 1915 to date, including the receiver's reports, with the monthly statements. It was likewise stipulated that the annual summaries published by the commission of the statistics relating to class 1 railroads, from 1915 to date, may be considered in connection with both applications. It was also stipulated that reference may be made to the comparative statement of operating averages published by the commission in the years 1921 to 1924, inclusive, known as statement No. 25200.) (Tes. 138–141.)

(Hearing closed.)

141 Hearing, Washington, D. C., February 4, 1929

Before Examiner Burnside.

(Statement by the examiner:)

Gentlemen, the commission has assigned this time and place for a further hearing in Finance Dockets Nos. 5454 and 5470, relating to the reorganization of the Atlanta, Birmingham & Atlantic Railway Company and the acquisition of control of the new company by the Atlantic Coast Line Railroad Company.

Mr. F. A. Barnes, of the commission's bureau of accounts, will be present for the commission to aid in developing the record, should occasion arise.

The circumstances leading to this further hearing leave the examiner in some doubt as to just what the procedure will be or the nature of the evidence offered. I shall be glad to hear a statement upon that subject.

(Statement by Mr. Elliott:)

Mr. Examiner, we are likewise somewhat in the dark as to what the commission desires in the matter of further evidence. The situation, as we know it, is that in the order authorizing the acquisition of stock of the Atlanta, Birmingham & Coast by the Atlantic Coast Line Railroad Company a condition was imposed in the following language:

"Provided, however, and the authority to issue said stock is granted upon the express condition, that for the purpose of the accounting as provided in the classification of investment in road and equipment in the text of Account 41—cost of road purchased, the cash value of the preferred stock issued must, in stating the transaction in the accounts, be reckoned on a basis not in excess of its par value, and the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

142 The applicant accepted the terms of the order, and when they came up to the question of stating the accounts undertook to set up and submit to the commission a set-up in which the common stock of the Atlanta, Birmingham & Coast was set up as worth the value of the property of the old Atlanta, Birmingham & Atlantic which was received by the Atlanta, Birmingham & Coast in exchange for its stock. I said the common stock, but I meant the common and the preferred stock was to be set up at that value.

Thereupon Director Wylie wrote a letter directing that the preferred stock be set up at par and that the common stock be set up at the amount which the Atlantic Coast Line Railway Company paid to the bondholders who originally acquired the Atlanta, Birmingham & Coast stock, which amount was about $4,080,000 as estimated at that time.

Therefore the Atlanta, Birmingham & Coast filed a supplemental petition with the commission protesting the directions given by

Director Wylie, protesting upon the ground that the amount paid by the Atlantic Coast Line to the bondholders of the old Atlanta, Birmingham & Atlantic, which were the original stockholders of the Atlanta, Birmingham & Coast, was not the fair measure of the value of the common stock and the preferred stock of the Atlanta, Birmingham & Coast under the terms of this order; protesting further the order itself provided that the stock should be set up on the books at the amount received therefor; that said amount was the actual property and franchises of the Atlanta, Birmingham & Atlantic; that the property and franchise, or the property of the Atlanta, Birmingham & Atlantic had been fixed by the Interstate Commerce Commission in Valuation Docket No. 1, and that a proper set-up upon
143 the books of the Atlanta, Birmingham & Coast would be a value predicated upon the findings of the commission and not a value predicated upon what the stock sold for on the market when the Atlantic Coast Line purchased it.

That petition included a prayer for a hearing and an opportunity to argue it orally. The petition was dismissed.

Thereupon the Atlanta, Birmingham & Coast filed a bill for an injunction against the commission to restrain it from requiring the Atlanta, Birmingham & Coast to set up its capital stock at the figure directed by Mr. Wylie and approved by the commission in its order dismissing the supplemental petition.

That injunction case was argued before the three-judge court in Atlanta and the court sustained the prayer of the Atlanta, Birmingham & Coast and handed down its opinion and order enjoining the commission and all parties connected with it from enforcing the setting up upon the books of a value predicated upon what was paid by the Atlantic Coast Line for the stock, to wit, some $9,000,000.

The court also said it was not prepared to say that the valuation fixed by the Interstate Commerce Commission in 1914 was the proper value of the property to be set up on the books, holding that the value to be put upon the books was the value of the property of the Atlanta, Birmingham & Atlantic as of the date it was conveyed to the Atlanta, Birmingham & Coast, and stating that the proper value to be put upon the books was some value between that value found by the commission and the value directed by Mr. Wylie, and remanded the case back to the commission for further hearing upon the supplemental petition above referred to.

144 That brings us before the commission upon a subsequent order reopening the case for further hearing.

It is our understanding that the purpose of the hearing is to obtain further evidence, if that be needed, as to the value to be set up upon the books of the Atlanta, Birmingham & Coast representing the stock issued by that company under authority of the commission. There is no question as to the value to be set up for the preferred stock

because the order of the commission, which governs us, prescribed that that stock should be set up at not more than par.

The only question left, then, is the value to be set up for the common stock. The remaining question, as I say, is as to the value that is to be set up for the common stock.

Of course, the value that is to be set up for the preferred and common stock is actually and necessarily to be determined by the figures representing the investment in road and equipment, which is set up on the asset side of the books of the Atlanta, Birmingham & Coast. That figure being determined and the preferred stock being set up at par, the balance would seem to represent the value of the common stock.

So, as we understand it, sir, this hearing is for the purpose of determining the figure to be set up upon the books of the Atlanta, Birmingham & Coast Railroad Company as the investment in road and equipment.

(Statement by Mr. Burnside:)

No doubt the hearing is broad enough to take in that subject. As I understand the situation, the immediate circumstance leading to the reopening was the refusal of the commission to hear oral
145 argument, but the language of the court in the case to which you have referred, I assume, led the commission to the belief or the conclusion that it would be expedient, if not necessary, to reopen the proceedings in such manner as to permit the introduction of evidence upon any issue raised by the original applications. In that connection I might say that upon the issuance of the notice of the hearing several of the original stockholders of the old company have written in asking whether the general method of readjustment, including disregard of the stockholders, would be discussed at this hearing. Of course, we have informed them to the effect that there was no expectation that that matter would be raised in the hearing.

Now, I would say, Mr. Elliott, that if you are prepared to introduce evidence bearing upon value, I would be glad to receive it. (Tes. 294–299.)

B. L. Bugg, in behalf of applicants, testified:

I am president of the Atlanta, Birmingham & Coast Railroad Company, which company acquired the property of the A., B. & A. Ry. Co. At the time of its organization the A., B. & A. Railway Company acquired the property of the A., B. & A. Railroad Company, and also the property of the Georgia Terminal Company and the Alabama Terminal Railroad Company. These properties were valued under Valuation Docket No. 1 of the Interstate Commerce Commission. I have a statement showing the combined values, of which I have copies.

(The document mentioned was received in evidence as Exhibit A.)

The document received as Exhibit A contains excerpts from
146 the final valuation by the Interstate Commerce Commission, and I have therein referred to the properties of the A., B. & A.

Railroad Company, and of the Georgia Terminal Company and the Alabama Terminal Railroad Company. I have shown in that statement the retirements from those properties so as to show the net property acquired by the Atlanta, Birmingham & Coast. This has been brought down to December 31, 1926, by the additions to the commission's value, as found in Valuation Docket No. 1, of the net additions and betterments, that is, the total additions and betterments less returns. That is shown by the last figure on the second page as $25,744,863.86. That includes the carrier as well as non-carrier property and excludes from the commission's valuation $410,000, which was stated as having been included by the commission as working capital. It excludes that part of the Alabama Terminal Railroad Company's property that was at that time leased to the Woodward Iron Company and subsequently sold to that company.

Q. Am I correct in understanding that the figure of $25,744,863.86 represents the property acquired by the Atlanta, Birmingham & Coast Railroad in its reorganization and under the deed from the master and the various companies involved in this reorganization proceeding?

A. That is property deeded to the purchasers of the Atlanta, Birmingham & Atlantic Railway Company by the receiver and the master under the order of court.

Q. Plus additions and betterments?

A. No. That was down to December 31, 1926. It included, of course, the additions and betterments to that date.

Q. Now, just to get the record straight, I think you said that was the property deeded to the Atlanta, Birmingham & Atlantic Railway Company. Did you mean that?

147 A. In a previous reorganization. (Tes. 299–302.)

That was also the property deeded to the Atlanta, Birmingham & Coast Railway Company, and that figure was based upon the figures found by the commission in Valuation Docket No. 1, plus net additions and betterments since that date down to December 31, 1926. The method of reaching these final figures of $25,744,863.86 is fully explained in the exhibit by quotations from Valuation Docket No. 1 and by the statement of the net addition of additions and betterments. The balance sheet, two pages, showing respectively assets and liabilities attached is simply based upon those figures as found by the commission plus additions and betterments. That was not attached to the other.

(The general balance sheet as of January 1, 1927, was received in evidence as Exhibit B.)

I was receiver of the A., B. & A. Railway Company at the time of the reorganization and was general manager of the A., B. & A. Railroad Company at the time of that reorganization. I have been connected with the A., B. & A. Railway Company since its organization, and have been president of the A., B. & Coast since its organi-

zation. I was connected with the A., B. & A. Railway Company continuously after its organization except for sixteen months during the war.

(Upon being asked by the examiner as to whether he intended to put in any information regarding the earnings of the property since acquisition, Mr. Davis stated it was not his intention to do so.) (Tes. 302–305.)

(Witness excused.)

148 E. L. GREENE, in behalf of applicants, testified:

I am auditor of the A., B. & Coast Railroad Company. Prior to that time I was auditor of the A., B. & A. Railway Company from October, 1918, until the end of Federal control, and then I continued as auditor until the property was sold. I am familiar with the paper introduced as Exhibit A. These figures are correct as recorded on the books of the Atlanta, Birmingham & Atlantic Railroad Company July 1, 1914, to December 31, 1915, and on the books of the Atlanta, Birmingham & Atlantic Railway Company January 1, 1916, to December 31, 1926, and are the same figures reported annually to the Interstate Commerce Commission bureau of statistics, except in the reorganization January 1, 1916, the equipment was inventoried, which had the effect of a retirement of $1,452,384.11, and has been treated as a retirement in the figures shown as the net additions and betterments to equipment of $579,211.84. I mention this difference, as the commission can verify these figures with the exception of that amount of return. Those figures which I have mentioned were reported by a letter to the Interstate Commerce Commission, addressed to the chief examiner of accounts, setting forth what was proposed to be done. That proposal was in effect approved by the commission: the letter was acknowledged and the method practically approved, or understood to be approved. It was put into effect.

The balance sheet which has been identified as Exhibit B is based upon these figures showing the valuation by the commission plus net additions and betterments. Those figures are correct. That paper was prepared under my supervision and is a correct showing.

149 CROSS-EXAMINATION

In this statement I have shown as chargeable to Account 701, investment in road and equipment, the value of the property acquired, as set out in Exhibit A. I am familiar with the rule of the road and equipment classification as contained in the last paragraph of section 2, general instructions—"Cost shall be actual money cost of carrier." As to whether it is my understanding that the charges to road and equipment accounts shall be based upon the basis of cost rather than the value of the property acquired; I would refer to Account 41 of the classification, investment in road and equipment, which, as I understand it, fits this case. As to where in the text of that account it differs from the provision that the charges shall be

upon the basis of cost: "When the consideration given for the property purchased is other than cash such consideration shall be valued on the current cash basis." That is not in conflict, as I understand it, with the rule to which you referred—"Cost shall be actual money cost to the carrier?" (Tes. 305–309.)

(The examiner stated that a certified copy of the decision of the court would be included in the record for convenience, and that it would not be necessary to put in a certified copy of the bureau's valuation. He stated that both might be referred to in brief or argument without the necessity of filing it in the record.) (Tes. 309–310.)

Mr. BARNES. The information that I desire to develop is this: Whether this statement which was prepared by the witness, as I understand it, was prepared in accordance with the accounting rules of the commission or rather upon the basis of the valuation of the property of the carrier, which was made under a different section of the act.

150 Asst. Director BURNSIDE. As I understand his answer, he interpreted Account 41 to authorize the inclusion of the amount shown.

Is that true, Mr. Greene?

The WITNESS. Yes, sir.

Q. (By Asst. Director BURNSIDE.) Then it would amount to this, that value and cost in this particular case would be identical, or practically so?

A. I might state my view, if you wish that in the record.

Q. I shall be glad to have it. I am not going to restrict this very closely.

A. Under Account 41 of the commission's classification accounts are to be set up upon basis of cost, that is, investment accounts, but the classification seems to provide for cases where the consideration might be other than cash, and it states when this is the case the accounts are to be set up upon the basis of the value of the considerations involved. We should not confuse this case with the section of the act referring to valuation of properties, as we have only used the figures found by the bureau of valuation to represent a fair value. In the event the bureau of valuation had not found a figure it would have been necessary to arrive at in some manner a fair value of what was received for the stock in order to set up the investment accounts.

Q. (By Mr. BARNES.) Mr. Greene, are you confusing the value or consideration given for the property with the value or consideration received? In other words, the amount given by the Atlanta, Birmingham & Coast Railroad was the stocks and bonds, the

151 preferred and common stock issued by it; the thing which it received was the railroad, and the value of the consideration given would be the value of the stocks issued for the property, would it not?

A. I don't know that I get the distinction.

Q. The Atlanta, Birmingham & Coast Railroad gave certain preferred and common stock for the railroad which it received, did it not?

A. Let me see if I get clear the distinction. If you grant that they set a value on the property, that that would be a property value and correspondingly it would not be stock value or the value of the stock. (Tes. 311–312.)

(The examiner ruled that it might be admitted that the final valuation of the A., B. & A. Railroad Company, and the decision of the United States District Court, Northern District of Georgia, in A., B. & Coast v. United States, are to be considered a part of this record.) (Tes. 314–315.)

(Hearing closed.)

Stamped: U. S. District Court. Filed in clerk's office Mar. 1, 1930.

152 In United States District Court, Northern District of Georgia, Atlanta Division

ATLANTA, BIRMINGHAM & COAST RAILROAD Company, complainant vs. THE UNITED STATES OF AMERICA, defendant INTERSTATE COMMERCE COMMISSION, intervening defendant	No. 497, in equity

The undersigned, Walter N. Echols, commissioner to take testimony and a notary public authorized to take acknowledgments and administer oaths in Fulton County, Georgia, does hereby certify that in pursuance of the notice hereto attached he called before him E. L. Greene, one of the witnesses mentioned in said notice, at 2.00 o'clock p. m., on the 11th day of October, 1928, at No. 1208 Citizens & Southern Bank Building, Atlanta, Georgia; that there were then present the following attorneys:

On behalf of the Atlanta, Birmingham & Coast Railroad Company: John A. Hynds, Esq., Robert C. Alston, Esq.

On behalf of the United States: Blackburn Easterline, Esq.

On behalf of the Interstate Commerce Commission: E. M. Reidy, Esq.

153 The said E. L. GREENE, being by me first duly sworn, did depose and say as follows:

Direct examination by Mr. ALSTON:

My name is E. L. Greene. I reside at Hapeville, in Fulton County, Georgia. I am auditor of the Atlanta, Birmingham & Coast Railroad Company, the principal place of business and the accounting office of which is at No. 26 Cain Street NW., in the city of Atlanta,

Fulton County, Georgia. My office is there. I have been connected with the complainant in this case since it took charge of the property on the 1st day of January, 1927. I was prior to that auditor of the Atlanta, Birmingham & Atlantic Railway Company and of B. L. Bugg, as receiver of the Atlanta, Birmingham & Atlantic Railway Company. I was with the property of the Atlanta, Birmingham & Atlantic Railway Company for a number of years, beginning in 1903 and stayed with the property about nine years, then left it and returned to it in 1918, and have been with the property, including the period of Federal control and including the receivership and the ownership of the Atlanta, Birmingham & Coast Railroad Company since that time. I have been in the accounting department all the while and have been the auditor of the company since October 1, 1918.

The property of the Atlanta, Birmingham & Coast Railroad Company was at one time known as the Atlanta, Birmingham & Atlantic Railroad Company and as the property of the Alabama Terminal Railroad Company, as the property of the Georgia Terminal Company. The Atlanta, Birmingham & Atlantic Railroad Company went into the hands of a receiver and the property was sold and acquired by the Atlanta, Birmingham & Atlantic Railway Company.

This latter company acquired the properties which had been
154 formerly owned by the Alabama Terminal Railroad Company and the Georgia Terminal Company, so that the properties now owned by the Atlanta, Birmingham & Coast Railroad Company embrace the properties of the Atlanta, Birmingham & Atlantic Railroad Company, the Alabama Terminal Railroad Company, and the Georgia Terminal Company. They cover about 640 miles of main line railroad running from Birmingham in the State of Alabama to Brunswick in Glynn County, Georgia, to Thomasville in Thomas County, Georgia, and to Waycross in Ware County, Georgia, and from Manchester in Meriwether County, Georgia, to Atlanta, Fulton County, Georgia, with terminals at all of those places and especially in the cities of Birmingham, Atlanta, and Brunswick.

The properties of the Atlanta, Birmingham & Coast Railroad Company are the properties which were valued by the Interstate Commerce Commission in its report in the 75th I. C. C., together with additions and betterments, less retirements. The property sometimes known as "the Mulga Branch," about 14 miles long in Alabama, is the only retirement, on the same basis that the Interstate Commerce Commission had valued it in its report in the 75th I. C. C. The property was sold under decree of foreclosure in the United States District Court for the Northern District of Georgia and entered in the other districts through which the road runs, and was purchased by Messrs. Fowler and Roosevelt on behalf of the reorganization committee and they conveyed the property to the Atlanta, Birmingham & Coast Railroad Company which was organized under a charter issued by the secretary of state of the State of Georgia. The conveyance was joined in by the receiver and also by the Atlanta,

Birmingham & Atlantic Railway Company, and the Atlanta, Birmingham & Coast Railroad Company entered into possession of this property as of the 1st day of January, 1927. The head-
155 quarters of this road are at No. 26 Cain Street NW., Atlanta, Fulton County, Georgia.

I identify a copy of the balance sheet of the Atlanta, Birmingham & Atlantic Railway Company, or the receiver thereof, which was filed with the Interstate Commerce Commission prior to the taking over of the property by the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927, by marking it "E. L. Greene No. 1." This balance sheet covers the calendar year 1926, showing the status at the end of business on December 31st of that year. The same balance sheet had been filed with the commission for a number of years, changed only as there were current changes by additions and betterments and retirements. There was no opposition to this balance sheet from the commission. The Atlanta, Birmingham & Coast Railroad Company went into possession of this property on the 3rd or 4th of January, 1927. As auditor of the Atlanta, Birmingham & Coast Railroad Company, on June 20, 1927, after correspondence with the Interstate Commerce Commission (Mr. Alexander Wylie, director of the bureau of accounts, acting for the commission) I did tender copies of proposed opening entries on the books of the Atlanta, Birmingham & Coast Railroad Company. Mr. Wylie, director of the bureau of accounts, wrote on August 3, 1927, the letter which is attached as Exhibit A to the original bill in this case, in which he stated "the entries submitted are not acceptable in that the initial charge to Account 701 'Investment in road and equipment' is based upon valuation (reproduction cost new) instead of cost." The letter itself is referred to. The Atlanta, Birmingham & Coast
156 Railroad Company filed a supplemental petition with the commission and is seeking relief from Mr. Wylie's letter or from the construction which the commission through that letter placed upon its order of December 21, 1926, entered in the Finance Docket 5454, reorganization and control of Atlanta, Birmingham & Atlantic Railway Company, reported in the 117th I. C. C. beginning at p. 439, and especially at p. 442. The commission denied the prayers of that petition in its order of April 9, 1928, which is set out in par. 14 of the bill. The figures which the Atlanta, Birmingham & Coast Railroad Company desired to use in setting up its accounts in the manner referred to in Mr. Wylie's letter, Exhibit A to the bill, were those ascertained by the Interstate Commerce Commission in its report upon the value of the property of the Atlanta, Birmingham & Atlantic Railway Company, the Alabama Terminal Railroad Company, and the Georgia Terminal Company in its report in the 75th I. C. C. p. — adjusted to additions and betterments and retirements.

In Exhibit B to the bill the figures under the column headed A. B. & C., the first figures in line, two of which are $29,471,859.00

on both sides, are those which the Atlanta, Birmingham & Coast Railroad Company desired to use and which are referred to in Mr. Wylie's letter of August 3, 1927, Exhibit A to the bill. These are the figures which were ascertained, as I have testified, by using the values placed on these properties by the commission in its report in the 75th I. C. C., p. —, plus additions and betterments, less retirements. The difference between my figures and the commission's figures as stated in Mr. Wylie's letter is $22,390,985.21.

157 Mr. Wylie took the par value of the preferred stock, to-wit: $5,180,300.00 and he added to that $4,080,699.80, which was the amount which the Atlantic Coast Line Railroad Company had paid to the holders of certain preference claims against the property of the Atlanta, Birmingham & Atlantic Railway Company; he then subtracted from the aggregate of these two figures the amount of $1,918,117.46, representing "Accrued depreciation—Road and No. 776, accrued depreciation—Equipment." These two sums, less the above-mentioned items of depreciation, come to $6,741,486.40. He then used the same figures which were proposed by the Atlanta, Birmingham & Coast Railroad Company as to all other items of assets. The result of the difference of the two methods is that under the method proposed by the commission the value of what is called in the accounts of the commission "Total investment" will be stated under the commission's method as $8,202,736.40, and under the Atlanta, Birmingham & Coast Railroad Company's method at $30,933,109.00. To this will be added the amounts of current assets and unadjusted debts, making the grand total under the commission's method $9,884,031.36, and under the proposed method of the Atlanta, Birmingham & Coast Railroad Company $32,614,403.96. Under the proposed methods of the two there is a difference in the figures in account No. 701 "Investment in road and equipment." Under the commission's method that item is shown as $6,741,486.40, against the proposed method of the Atlanta, Birmingham & Coast Railroad Company at $29,471,859.00. In the method proposed by the commission a deduction of $1,918,117.46 is made on account of depreciation in road and also depreciation in equipment. It is inconceivable to me that it can be correct. The Atlanta, Birmingham & Coast Railroad Company acquired the property as of

158 January 1, 1927, and under the order of the commission it would be required to immediately write off of the value of this property, as a matter of depreciation in two items, the sum of $1,918,117.46. No suggestion has been made by the commission that the figures which the Atlanta, Birmingham & Coast Railroad Company proposed using in setting up its accounts were not correct if the valuation fixed by the commission in its report in the 75th I. C. C. was to be used. There is no difference between us as to those figures if that valuation is to be used. The decision in the commission's valuation case of the Atlanta, Birmingham & Coast

Railroad Company, the Georgia Terminal Company, and the Alabama Terminal Railroad Company was finally rendered July 20, 1923. In Mr. Wylie's letter he refers to certain amounts paid out by the Atlantic Coast Line Railroad Company for current outstanding liabilities of the receiver, reorganization expenses, etc., amounting to $4,080,699.80. The Atlanta, Birmingham & Coast Railroad Company did not receive any of that money. That money was paid to the holders of those preferred claims, including the officers of the court, the court costs, and the claims of persons who had furnished coal for the operation of the road and who claimed on that account priority over the mortgage securing the bonds, but not one cent passed to the Atlanta, Birmingham & Coast Railroad Company. The Atlanta, Birmingham & Coast Railroad Company received nothing but the property formerly owned by the Atlanta, Birmingham & Atlantic Railway Company.

159 Reference is made by the commission in its order of December 21, 1926, to "Account 41." The account is defined in classification of Investment in road and equipment—Steam roads, issued by the commission, as follows:

"This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash shall be charged to this account. Where the consideration given for the property is other than cash, such consideration shall be valued on a current cash basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost as their cash value at the time the contract is made.

"This account shall be used only as a clearing account in which temporarily to carry the cost of road purchased until such time as a plan for distributing such cost to the primary accounts appropriate for the property is approved by the commission."

That account is a temporary one and is used for the purpose of assembling the account which is known as Account No. 701, and is referred to in the bill in the case and in Exhibit B as Account No. 701 "Investment in road and equipment." That account No. 701 is as follows:

"This account shall include the accounting company's investment in road and equipment (including that held under contract for purchase) in existence at the date of the balance sheet. The accounting company's records shall be kept in such manner as to show the amount credited to this account subsequent to June 30, 1914, for property retired, the cost of which was included in the account of that date."

Under Account No. 41 it is provided that—

"Where the contract to purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such

equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account."

160 If I took the investment in road and equipment at $6,751,486.40, the figures set up by the commission, and deducted from that the value of the equipment, it would leave as the value for the road $3,641,711.08. The investment in equipment as of December 31, 1926, was $4,306,660.00, the depreciation on the equipment up to that time was $1,306,884.68, leaving to investment in equipment $2,999,775.32; this latter sum to be subtracted from $6,751,486.40. That figure in the system of accounting proposed by the commission will represent the value of the road, including all terminal facilities and the buildings and the rights of way, grading, crossties, rails, switches, turn out, and every other thing which goes to make up what is called "the road"; in fact, all of its property except equipment. That figure does not even approximately, in my opinion, represent the value of the road of the Atlanta, Birmingham & Coast Railroad Company. The Atlanta, Birmingham & Coast Railroad Company has 640 miles of main line. Those figures referred to, $3,641,711.08, represent a value of $5,846 per mile; but this does not take into account the terminal properties, the buildings, and the side tracks, and various kinds of service tracks. The costs of the terminal properties in the cities of Atlanta, Birmingham, and Brunswick would be in excess of the sum, which, under the commission's plan stands for the value of all of the company's property except equipment.

In preparing a case for the Interstate Commerce Commission or for a State commission or for the court concerning what was a reasonable rate or schedules of rates, if I wanted to show the fair value of the property of the company, measured by either the

161 "reasonable and necessary investment" in the property for rendering service to the public or on the basis of the reproduction costs, less depreciation, the books of the Atlanta, Birmingham & Coast Railroad Company when set up in accordance with the plan of the commission would not only not be helpful but they would be very far from being helpful to the public or to the commission or the court or the Railroad Company. The first thing we would have to do, if we used such figures, would be to prove that our books were not true, that is, we would have to set aside the books. Supposing the law prohibits the Atlanta, Birmingham & Coast Railroad Company from "keeping any other kinds of records or memoranda than those prescribed or approved by the commission," the Atlanta, Birmingham & Coast Railroad Company could keep no books which would help it in making presentation of its case to a court or to the Interstate Commerce Commission or the State commission in a rate inquiry. If the books were kept in accordance with Mr. Wylie's letter, Exhibit A to the bill, the records of the Atlanta, Birmingham

& Coast Railroad Company, thus kept, would be very far from being in harmony with the records of the Interstate Commerce Commission. The books kept on the method proposed by the Atlanta, Birmingham & Coast Railroad Company would be in exact harmony with the method of the commission contained in its valuation plan.

Section 20, subsection 5 of the act to regulate commerce contemplates that the commission shall as soon as practicable prescribe for carriers, subject to the act, the class of property for which depreciation charges may properly be included under operating expenses and the percentages of depreciation which will be charged. If the books of the company were kept in accordance with the con-

162 tentions of the commission, as shown in Mr. Wylie's letter, it seems to me that if depreciation was accrued on values suggested by the commission the figures would fall far short of reflecting actual depreciation of the property. Supposing a case where there was a building on the right of way, which cost, say one thousand dollars, if the plan prescribed by the commission was used. I understand that the value of the units of property would be scaled down proportionately to make up the total investment proposed by the commission, which would result in depreciation being accrued on a value of something like two hundred dollars instead of one thousand dollars. Supposing you want to set up depreciation on a building that cost a thousand dollars so as to get $20.00, or 2 per cent, the normal depreciation, and that the building was carried on your books at two hundred dollars; in order to get the $20.00 you would have to carry it for a depreciation at a rate of 10 per cent. The rate used would be above the normal rate of depreciation. Under the present classification of the commission I understand the equipment should be appraised at its current value and so included on the books, the deduction of the difference all coming out of the road property. This rate would apply to crossties, rail, angle bars, buildings on rights of way, the terminal properties, switch stands, and things like that. It applies to all things included in the road property. The commission has not prescribed on what classes of road property depreciation shall be set up. It has been customary to set up, in our accounts, depreciation on fixed property, consisting mainly of structures, and not on roadbed, rail, and ties.

163 Section 20, subsection 5 of the act permits a carrier to charge against its operating expenses only the depreciation allowed by the commission. Suppose the commission allowed 2% depreciation for the building I have just illustrated; in order that I might allow $20.00 against operating expenses it would be necessary in those circumstances to carry the building back up to its real value of $1,000.00. It would not be practical to keep books on that basis. A railroad, in my opinion, can not operate fairly to itself or to the public without carrying an account for depreciation. Of course, all physical things depreciate; the rails, the ties, the spikes, the plates or angle bars, and the buildings all wear out with just the passing of

time. A crosstie which is put in on January 1, 1928, is not worth on December 31, 1928, as much as it was when it was put in. Experience has shown that, and if a depreciation account is not kept, the affairs of the company are not intelligently reflected. If the valuation of the property of the Atlanta, Birmingham & Coast Railroad Company was being ascertained by the commission for the purpose of ascertaining "a fair return thereon," as provided in subsection 3 of section 15a of the act, the books of the company, if kept according to the method proposed by the commission, would be completely useless, either to the company, the commission, or the public, for this purpose. If the company was asking that its property investment be given some value, either in a rate matter or a recapture matter or a fair return matter, the account could then be given no value, if the
164 books were kept in the manner prescribed by the commission.

The first thing we would do would be to put the books aside. If one wanted the company's books to reflect the value of the company's property for the purpose of putting on a mortgage loan or the sale of stock or other securities, the books kept as prescribed could not be used for that purpose. I can not think of any use to which the books could be placed in any undertaking which required the correct status of the company's financial condition to be disclosed. The books, kept on such basis, would not correctly disclose the status of the company's affairs to the stockholders or creditors, so far as the value of the property is concerned; that is, as the assets of the company are concerned. I have the original letter written by Mr. Wylie, set out in the bill as Exhibit A, dated August 3, 1927.

Cross-examination by Mr. ESTERLINE:

I have been connected with the old Atlanta, Birmingham & Atlantic Railroad and the receiver since 1903—outside of six years. There have been several changes. Of course, I could name them if you wish. My position has been that of accountant or auditor; accountant from 1903 to 1912; auditor from 1918 to the present date. I did not testify at any time in the record in the proceeding before the Interstate Commerce Commission in this case or in any of these receivership or reorganization proceedings we are talking about. I was in Atlanta all of the time. I was available as a witness if
165 I had been asked to testify before the Interstate Commerce Commission on this petition for rehearing about which I have testified. I could have testified before the Interstate Commerce Commission if I had been called as a witness in this proceeding; and I would have testified before the Interstate Commerce Commission precisely, or substantially, the same as I have testified here this afternoon at this examination.

I have never had any connection, of course, with the operating side of a railroad. I do not remember when I first took up my consultations with respect to appearing as a witness in this pro-

ceeding at this time. Well, I might say that I have been called on for information as to figures and records leading up to this for some months before; I don't know how long. I first began to formulate the testimony I gave to-day some week or ten days ago. With respect to these questions and answers which have been read into the record this afternoon, I was with counsel when these questions were brought up. I gave the information to put in the answers. There were some of them that I was hesitant about for some considerable period of time. The difficulty with respect to that was that they were not stated so I thought they were clear. As I previously stated, the proposed questions were set out and discussed with counsel and it was understood as to what the actual facts were. I didn't prepare the answers to the questions, or the questions, directly; I submitted the information. I didn't do the writing out of the answers to the questions; I answered the questions with Mr. Alston.

166 Cross-examination by Mr. REIDY:

I think I did not read the testimony in Finance Dockets numbers 5454 and 5470. I have the printed documents that were submitted to the commission. I have read those, but if there was any testimony that was actually before the commission at the time, I have not a copy of that. I can't say whether the testimony I have given here to-day is additional to or different from that already given to the commission by other witnesses, but I can say that the testimony I have given here in facts from the books and records as I know them and found them.

Redirect examination by Mr. ALSTON:

As to my consultation with counsel concerning this testimony, I did consult with counsel and furnish data on this subject from a time antedating and during the preparation of the bill in this case. As to changes in the answers that I made here, there have been no changes except to make corrections of fact. Every answer written to the proposed interrogatories which are contained in the memorandum which was used in taking my testimony, was either in my words or substantially in my words.

167 *Exhibit 1—E. L. Greene—Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg receiver—Balance sheet at Dec. 31, 1926*

ASSET SIDE

Items	
Investment:	
701. Investment in road & equipment	$38,596,400.62
704. Deposits in lieu of mortgaged property sold	237,319.47
705. Miscellaneous physical property	1,262,970.04
706. Investments in affiliated Cos.' stocks	197,180.00
707. Other investments stocks	1,100.00
Total investments	40,294,970.13

Current assets:	
708. Case	$108,138.50
711. Special deposits	3,001.22
713. Traffic and car-service balances receivable	132,734.62
714. Agents and conductors balance	26,258.41
715. Miscellaneous accounts receivable	278,165.45
716. Material and supplies	818,583.63
719. Other current assets	3,051.43
Total current assets	1,369,933.26
Deferred assets:	
720. Working fund advances	2,758.00
Total deferred assets	2,758.00
Unadjusted debits:	
723. Rents and insurance premiums paid in advance	1,122.64
725. Discount on funded debt	82,128.17
727. Other unadjusted debits	164,889.81
Total unadjusted debits	248,140.62
Grand total	41,915,802.01

168 LIABILITY SIDE

751. Capital stock, com	$30,000,000.00
Total stock	30,000,000.00
Long-term debt:	
755. Funded debt unmatured	8,633,906.78
756. Receiver's certificates	322,500.00
Total long-term debt	8,956,406.78
Current liabilities:	
759. Traffic and car service balances payable	183,527.50
760. Audited accounts and wages payable	1,767,816.61
761. Miscellaneous accounts payable	13,716.48
762. Interest matured unpaid	1,308,716.65
766. Unmatured interest accrued	20,184.66
768. Other current liabilities	18,308.67
Total current liabilities	3,312,270.57
Deferred liabilities:	
770. Other deferred liabilities	3,702.11
Total deferred liabilities	3,702.11
Unadjusted credits:	
771. Tax liability	7,966.92
775. Accrued depreciation—road	611,232.78
776. Accrued depreciation—equipment	1,306,884.68
778. Other unadjusted credits	1,631,387.18
Total unadjusted credits	3,557,471.56
Corporate surplus:	
779. Additions to property thru income and surplus	9,836.82
784. Profit and loss balance	3,923,885.83
Total corporate surplus	3,914,049.01
Grand total	41,915,802.01

E. S. GREENE, *Auditor.*

169 In United States District Court

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, complainant

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

In equity No. 497

Opinion

The order of the Interstate Commerce Commission here in question arose in this way. Certain railroads and their equipment now owned by the Atlanta, Birmingham & Coast Railroad Company (called hereafter the Coast Company), after five years of unprofitable operation under a receivership in this court, were sold at foreclosure sale to representatives of their bondholders, who proposed to organize a corporation, the Coast Company, to take over and operate them. The new corporation was to issue, in return for the railroads, $5,180,000 of preferred stock and 150,000 shares of common stock without par value. The preferred stock was to be used to pay bondholders' claims and the common stock was to be sold to the Atlantic Coast Line Railroad Company (called hereafter the Coast Line Company) in consideration of its guaranty of the principal and dividends of the preferred stock and by its payment, or assumption, of accumulated losses in operation, taxes, and receivership and reorganization expenses, amounting to about $4,080,000. The Coast Company took proceedings before the Interstate Commerce Commission to obtain leave to operate the railroads and issue the stock, and by separate proceedings the Coast Line Company sought authority to acquire the common stock on the terms set forth. The proceedings were consolidated and by several successive orders the authorities sought were granted. The representatives of the bondholders deeded the railroads to the Coast Company in consideration of its entire stock issues and disposed of the preferred stock to the bondholders and of the common stock to the Coast Line Company, as proposed. The commission's order of December 21st, 1926, authorizing the Coast Company thus to issue and dispose of its stock, imposes this condition: "Provided, however, and authority to issue said stock is granted upon the express condition, that for the purpose of accounting, as provided in the classification of investment in road and equipment in the text of Account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor." In August, 1927, the Coast Company undertook to set up its account in compliance with the general requirements of Account 41 of the commission's classification of investment in road and equipment, which covers all cases of pur-

chased roads, and also in compliance with the conditions of the order of December 21st, 1926, specially applying to this transaction. It proposed, since its entire stock was exchanged for the railroads, to treat them as worth thirty million dollars, in round figures, on the basis of the valuation of the railroads as of 1914, made by the commission itself, under section 19a of the commerce act. Director Wylie, of the bureau of accounts, rejected this proposal and insisted that this valuation was based on reproduction cost new, rather than the actual cost to the Coast Company, and he insisted that figures of about $5,180,000 for the preferred stock, plus $4,080,000 paid by the Coast Line Company for the common stock, $9,260,000 in all, be the basis. The Coast Company then made a supplemental application to the commission asking for a hearing and for a construction of the order of December 21st, 1926, and for leave to use the figures and basis first proposed. Without a hearing the application was denied on April 9th, 1928.

The commission's classification rule, formulated for stating original investment in road and equipment, whether constructed by the accounting carrier or purchased by it, evidently aimed to avoid "watered" or even estimated values, and to reflect only actual outlays. Cost and not value is everywhere spoken of. But rule 41, dealing with a purchased road, of necessity requires that when a road is paid for otherwise than by cash, the "current cash value of the consideration" is to be entered in the accounts. The consideration here was stock, preferred and common. The valuation of the preferred stock at $5,180,000 is not disputed. Two methods of valuing the common stock are contended for, one, that it was worth the value of the roads acquired, less the value represented by the preferred stock; the other that it was worth what the Coast Line Company paid for it in cash, $4,080,000. The requirement of the order of December 21st, 1926, that the common stock must be reckoned "on a basis not in excess of the amount received therefor" comes to the same thing as the requirement of rule 41, and meets the same divergent constructions. It can not be said with accuracy that the money paid by the Coast Line Company was received by the Coast Company for its stock. The Coast Company received for the stock the deed of the bondholders' representatives covering the railroads, and they in turn sold the common stock to the Coast Line Company, and for a consideration not only of $4,080,000 actually paid, but also of heavy guaranties of dividends on the preferred stock over and above its par already allowed in this valuation. The words of the order of December 21st, 1926, were acted on by the parties and should have their fair operation. We think they required that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it. We do not think this valuation is fixed either by the value as

of 1914, made by the commission, nor by what the Coast Line Company was willing to pay and assume, though both may be matters important to be considered in making a fair valuation. For, on the one hand, the Coast Line Company may not have paid the full fair value in its trade with the bondholders' representatives; while on the other hand, hearings both before this court and before the commission, had pending the sale, strongly indicate that these railroads, circumstanced as they were, were not then worth, for sale or operation, nearly what had been originally invested in them. Independently of the commission's power under section 20, subsection 1 and subsection 5, to establish uniformity in and prescribe the forms of accounts of carriers, section 1, subdivision 20 authorizes the imposition of conditions upon its grant of a certificate of public convenience and necessity for the acquisition and operation of a railroad; and by necessary implication it has power to see that the condition is complied with. Disobedience to an order made to this end touching the accounts would be punishable under section 20, subsection 7, of the act as a willful failure to make a correct entry and the keeping of a record other than that approved by the commission. The order, by consequence, is one over which this court has jurisdiction under U. S. Code Title 28, Sect. 41 (28). While the commission might, on the record already before it, properly refuse to allow its valuation of the railroads as of 1914 to be the measure of their fair value when acquired by the Coast Company, nevertheless to fix the value suggested by Director Wylie without a hearing would be arbitrary and unlawful. We are in some doubt whether the order of April 9th, 1928, really goes so far, but it is so interpreted in the bill (see par. 14), and neither the answer of the commission nor the argument of its counsel has repudiated that interpretation. We conclude it should be set aside, leaving the supplemental application of the Coast Company to stand for a hearing before the commission in due course.

This October 26th, 1928.

SAMUEL H. SIBLEY,
U. S. Judge.

170 In United States District Court, Northern District of Georgia, Atlanta Division

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, complainant v. UNITED STATES OF AMERICA, DEFENDANT	In equity No. 497

Decree

Filed Nov. 2, 1928

This case coming on for final hearing before a special court constituted as provided by statute, and composed of Hon. Richard W. Walker, United States circuit judge, Hon. Benjamin C. Dawkins,

and Hon. Samuel H. Sibley, United States district judge; after hearing evidence and argument, in accordance with an opinion filed herewith it is considered, ordered and decreed that the equities are with the complainant and that the order of April 9th, 1928, complained of, in so far as the same fixed the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside and all persons interested in the enforcement of said order, and their officers and agents, are permanently enjoined from enforcing the same, and that the supplemental application of the complainant in which said order was entered by the Interstate Commerce Commission stand for further hearing before said commission.

This October 26th, 1928.

R. W. WALKER,
United States Circuit Judge
BEN C. DAWKINS,
United States District Judge.
SAMUEL H. SIBLEY,
United States District Judge.

[File endorsement omitted.]

171 Before the Interstate Commerce Commission

IN THE MATTER OF THE APPLICATION ON BEHALF OF ATLANTA, BIRMINGHAM and Coast Railroad Company for a certificate of public convenience and necessity, pursuant to subdivision (18) of section 1, and for authority to issue stocks pursuant to subdivision (2) of section 20a, of the interstate commerce act and other applicable provisions thereof

To the honorable Interstate Commerce Commission:

Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins, as the reorganization committee constituted by the plan and agreement of reorganization dated February 23, 1926, of Atlanta, Birmingham & Atlantic Railway Company and not individually, hereby apply on behalf of Atlanta, Birmingham and Coast Railroad Company (hereinafter called the applicant) for a certificate of public convenience and necessity, pursuant to subdivision (18) of section 1, and for authority to issue stocks pursuant to subdivision (2) of section 20a of the interstate commerce act and other applicable provisions thereof, and respectfully state as follows:

First. The exact corporate name of the applicant is to be Atlanta, Birmingham and Coast Railroad Company, or such other name as the reorganization committee may, with the approval of the commission, determine.

It is requested that communications in respect of this application be addressed to Cotton & Franklin, of counsel for the reorganization committee, 43 Exchange Place, New York City.

Second. The applicant is to be organized under the laws of the State of Georgia or of such other State as the reorganization com-

mittee may, with the approval of the commission, determine, for the purpose, among other things, of acquiring and operating the lines of railroad and other properties of the Atlanta, Birmingham & Atlantic Railway Company (hereinafter called the Old Company) and its receiver, pursuant to said plan and agreement of reorganization dated February 23, 1926, for the reorganization of the Old Company. Said plan and agreement (hereinafter called the plan) will be presented at the hearing of the application.

A sale of said lines of railroad and other properties is to be held, pursuant to a decree in the receivership proceedings hereinafter mentioned, as soon as practicable. At such sale the reorganization committee will cause a bid to be made. In case such bid is accepted and the lines of railroad and other properties sold pursuant thereto, the purchasers will incorporate under sections 2585 and 2586 of the Georgia Code or other law as aforesaid, and the corporation thus formed will be the New Company under the plan and the applicant herein. The reorganization committee will cause the applicant to join in this application as soon as the applicant shall be incorporated.

Third. The names of each State in which it is proposed that the applicant operate are Georgia and Alabama. The applicant may acquire certain real estate of the Old Company situated in the State of Florida, but it is not proposed that applicant shall operate in said State of Florida. The applicant is to take any action necessary to obtain authority to engage in transportation by railroad in said States of Georgia and Alabama.

Fourth. This application is:

(a) For a certificate pursuant to subdivision (18) of section 1 of the interstate commerce act that the present or future public convenience and necessity require or will require that the applicant acquire and operate the lines of railroad and other properties of the Old Company and of its receiver, as aforesaid, and engage in transportation over and by means of the same;

(b) For the authorization, pursuant to subdivision (2) of section 20a of the interstate commerce act, of the issue by the applicant of $5,180,344.07 par value of its preferred stock, and 150,000 shares without par value of its common stock in accordance with the provisions of the plan; and

(c) For any other action required to facilitate the consummation of the plan.

Fifth. The purposes and uses of the proposed issue of capital stock are to acquire the lines of railroad and other properties of the Old Company and its receiver, as aforesaid, and to carry out the plan.

Sixth. The reasons briefly stated why the present or future public convenience and necessity require or will require the proposed acquisition and operation, and the facts relied upon to show that the proposed issue of stocks (1) is for some lawful object within the applicant's corporate purposes and compatible with the public interest, which is necessary, or appropriate for, or consistent with

the proper performance by the applicant of service to the public as a common carrier, and which will not impair its ability to perform that service, and (2) is reasonably necessary and appropriate for such purpose, are as follows:

RECEIVERSHIP.—On February 25, 1921, a general creditors' bill was filed by Birmingham Trust and Savings Company against the Old Company in the United States District Court for the Northern District of Georgia, Northern Division, and B. L. Bugg, Esq., was on said date appointed receiver of all the lines of railroad and other properties of the Old Company. Ancillary bills were filed in the other districts where the property of the Old Company was located. The Old Company having defaulted under the three mortgages covering its lines of railroad and other properties or some portion thereof, bills of complaint for the foreclosure of said mortgages were filed in said United States District Court and in the ancillary districts, and said B. L. Bugg, Esq., was appointed receiver of all mortgaged lines of railroad and other properties of the Old Company. Said receivership has since continued, and said receiver has possession of and is now operating said lines of railroad and other properties of the Old Company, except such property as has since been sold pursuant to orders of court. One of the main purposes of the plan is to end the receivership and take said lines of railroad and other properties out of the hands of the court and place them in the hands of a company which will be able to carry on the essential service to the public performed by the lines of railroad now operated by the receiver.

EFFORTS TO REORGANIZE.—The two committees representing, respectively, the first-mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (a predecessor of the Old Company) and the fifteen-year five per cent income mortgage gold bonds of the Old Company have been trying since the receivership to bring about a reorganization of the lines of railroad and other properties of the Old Company. Without sufficient earning power it was not possible to work out any plan that could be financed.

Said receiver has made every effort to keep said lines of railroad and other properties in good operating condition and to increase their business. The territory served by the lines of railroad of the Old Company is undeveloped and therefore unproductive of sufficient volume of traffic to give a dependable revenue. At practically every point where business originates a competitive line is in the field, and it has been extremely difficult to develop new business on the line itself. It has been necessary to go far afield in the solicitation of freight. More than 80% of the gross revenue is from freight and three-fourths of it is derived from through traffic. Most of the increase in business which has been obtained in the last year or two has come from the railroad's connections, and more favorable recent returns are due to the increased activity in the South. As the consolidation of railroads becomes effective, it will be increasingly

difficult for an independent small railroad to compete successfully for traffic.

Numerous efforts have been made to dispose of said lines of railroad and other properties to other interests and there have been several negotiations with possible purchasers, but no proposition was made that seemed as satisfactory as the one made by Atlantic Coast Line Railroad Company (hereinafter called the Coast Line). No other plan of reorganization has been proposed, and at this time the alternative to approving the plan is to let the properties go to the auction block with no bidders in sight able and willing to acquire the lines of railroad and other properties as a single operating unit.

REORGANIZATION PLAN.—The plan was prepared by said committees representing, respectively, majorities of said income bonds and of said first-mortgage bonds and is based upon an agreement dated February 23, 1926, between said committees and the Coast Line. Said agreement was reached after a period of bargaining at arm's length between said committees and the Coast Line.

The plan contemplates that all claims having priority over the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company formerly held by the United States Government (if it is necessary to pay off the same), obligations of said receiver and receivership and reorganization expenses are to be paid in cash to be provided by the Coast Line upon the acquisition of said lines of railroad and other properties by the applicant, except that obligations not matured at the time of the acquisition may be assumed by the applicant instead of being paid in cash. This provision provides for the payment or retirement of all first and refunding mortgage bonds of the Old Company and the mortgage securing said bonds is to be released and discharged.

In addition to said first and refunding mortgage bonds there are two bond issues secured on said lines of railroad and other properties of the Old Company or some portion thereof, as follows:

(a) Said first-mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (hereinafter called the first-mortgage bonds), of which $4,090,000 principal amount are outstanding in the hands of the public; and

(b) Said fifteen-year five per cent income mortgage gold bonds of the Old Company (hereinafter called the income bonds), of which $4,543,906.78 principal amount are outstanding in the hands of the public (exclusive of $400,000 principal amount held as collateral for a loan made to the Old Company, which loan is to be paid off as above provided, and $256,093.22 principal amount held in the treasury of the Old Company).

The provision made in the plan for the income bonds and first-mortgage bonds is that the holders thereof who shall assent to the plan as therein provided shall be entitled to receive upon consummation of the plan $60 par value of preferred stock of the applicant for each $100 principal amount of bonds, so that there will be issued

$5,180,344.07 par value of preferred stock. The Coast Line is to provide cash sufficient to meet the distributive shares of any first-mortgage bonds and/or income bonds the holders of which shall not assent to the plan, as aforesaid, and the Coast Line is to receive the shares of preferred stock which would have been issued to such holders had they assented to the plan as aforesaid.

The preferred stock is to be preferred as to cumulative dividends at the rate of 5% per annum (accruing from one year after title to the properties to be acquired by the applicant shall vest in the applicant) and as to assets at 100 and accrued dividends, to be redeemable after January 1, 1935, as a whole but not in part at 103 and accrued dividends, and to have no power to vote except in case of continuing default in the payment of two semiannual dividends, in which case the preferred stock is to have exclusive voting power so long as any default shall continue. Dividends at the rate aforesaid and the redemption of the preferred stock upon the liquidation, merger, or consolidation of the applicant or any transfer of all or a substantial part of the property of the applicant are to be guaranteed by the Coast Line. The preferred stock and common stock are more particularly described in the plan.

It is apparent from the terms submitted to the bondholders that it has not been possible to work out a reorganization involving a participation by the stock of the Old Company.

The cash requirements of the plan are to be provided by the Coast Line, and the Coast Line is to receive the entire issue of 150,000 shares without par value of the common stock of the applicant.

Said lines of railroad and other properties to be acquired by the applicant, with their principal termini, points of interchange, etc., are substantially as set forth in Appendix 2 attached to the report of this commission in Valuation Docket No. 1, reported in 75 I. C. C., beginning at page 645, with such additions, eliminations, and changes as may have been subsequently made in respect thereof.

The acquisition and operation of said lines of railroad and other properties by the applicant will be within its powers and corporate purposes as set forth in its charter and as authorized by the laws of the State of Georgia and the State of Alabama.

Seventh. The above-mentioned agreement dated February 23, 1926, between said committees and the Coast Line provides that said committees will bid at said sale of said lines of railroad and other properties, and that the Coast Line will furnish amounts required to qualify as bidders and to pay such portion of the purchase price as may be required to be paid in cash, and will provide cash to take care of receivership and reorganization expenses and claims having priority over the mortgages as hereinabove stated. Said agreement and the plan are subject to the approval of the Interstate Commerce Commission and are also subject to the deposit of at least $7,000,000 aggregate principal amount of first mortgage bonds and income bonds on or before September 1, 1926. By the plan the reorganiza-

tion committee was substituted in the place of committees under the plan and said agreement.

Eighth. An application has been or will be filed by the Coast Line for authority to guarantee the preferred stock to be issued by the applicant and to acquire the applicant's common stock and such of applicant's preferred stock, if any, as the Coast Line may receive as hereinabove stated. Inasmuch as said application relates to the same subject matter as this application, request is hereby made that the two applications be heard and considered together.

Ninth. Said reorganization committee will cause the applicant, forthwith upon its incorporation, to file an application herein joining in this application and setting forth additional relevant facts including a statement of the following: (a) Exact corporate name of applicant; (b) the laws under which the applicant is organized; (c) pertinent facts as to its authorization to do business in States other than that by which it is created; and (d) the names, titles, and post-office addresses of the applicant's president, secretary, principal attorney, and executive officer by whom such application is signed, verified and filed, and to file with such application copies of the following papers duly authenticated in accordance with the requirements of the commission: (1) Charter; (2) by-laws; (3) resolutions of directors authorizing the issues in respect of which this application is made, and copies of all resolutions of stockholders relating to the same; (4) resolutions of directors designating by name the executive officer by whom the application filed by the applicant is signed, verified and filed; (5) opinion of counsel; and (6) specimens, or forms where specimens are not available, of all securities in respect of which the application is made.

Wherefore said reorganization committee requests that your commission (a) make a certificate that the present or future public convenience and necessity require or will require the acquisition and operation of said lines of railroad and other properties by the applicant; (b) authorize the issue by the applicant in temporary or definitive form, and if in temporary form the issue of securities of like character in definitive form in exchange therefor, of said $5,180,344.07 par value of its preferred stock and said 150,000 shares without par value of its common stock; and (c) take any other action required to facilitate the consummation of the plan.

Dated, April 8, 1926.

FRANCIS R. HART,
GEORGE E. WARREN,
GEORGE E. ROOSEVELT, and
JAMES H. PERKINS,
as the Reorganization Committee Above Described and Not Individually,

By GEORGE E. WARREN,
A Member Thereof.

STATE OF NEW YORK,
County of New York, ss:

George E. Warren, being duly sworn, deposes and says that he is a member of the reorganization committee described in the foregoing application; that he has read the foregoing application and is familiar with the matters therein set forth; and that the matters therein set forth are true to the best of his knowledge and belief; and that he has been duly authorized by said reorganization committee to verify and file said foregoing application.

GEORGE E. WARREN.

Subscribed and sworn to before me this 8th day of April, 1926.

C. A. KENNEY. [NOTARIAL SEAL.]
Notary Public, Kings County.

Kings County clerk's No. 474, register's No. 7149; certificate filed in New York County clerk's No. 327, register's No. 7276; Bronx County clerk's No. 22, register's No. 2772.

Commission expires March 30, 1927.

172 Before the Interstate Commerce Commission

IN THE MATTER OF THE APPLICATION ON BEHALF OF Atlanta, Birmingham and Coast Railroad Company for a certificate of public convenience and necessity, pursuant to subdivision (18) of section 1, and for authority to issue stocks pursuant to subdivision (2) of section 20a, of the interstate commerce act and other applicable provisions thereof	Finance Docket No. 5454

To the honorable Interstate Commerce Commssion:

Atlanta, Birmingham and Coast Railroad Company (hereinafter called the applicant) hereby concurs and joins in and adopts as its own the application dated April 8, 1926, to your commission made by the reorganization committee therein described on behalf of the applicant, and respectfully states as follows:

First. The exact corporate name of the applicant is Atlanta, Birmingham and Coast Railroad Company.

Second, The names, titles, and postoffice addresses of the applicant's president, secretary, principal attorneys and executive officer by whom this application is signed, verified, and filed are as follows:

Title. Name. Post-office address

President, A. V. B. Gilbert, 56 Marietta Street, Atlanta, Georgia.
Secretary, J. A. Fowler, jr., 43 Exchange Place, New York, N. Y.
Principal attorneys, Cotton & Franklin, 43 Exchange Place, New York, N. Y.
Executive officer by whom application is signed, verified, and filed, J. A. Fowler, jr., vice president, 43 Exchange Place, New York, N. Y.

Third. The applicant is organized and received its present charter under the laws of the State of Georgia.

Fourth. The applicant does not now operate in any State. The applicant proposes to operate in the States of Georgia and Alabama. The applicant has qualified to do business in the State of Alabama.

Fifth. The applicant files with this application copies of the following papers duly authenticated in accordance with the requirements of the Interstate Commerce Commission:

Exhibit A. Petition for incorporation;

Exhibit B. Certificate of secretary of state (Exhibits A and B constitute the charter of the applicant), with resolution of acceptance of charter;

Exhibit C. By-laws of the applicant (there has been no amendment of the charter or by-laws);

Exhibit D. Copies of all resolutions of directors authorizing the issues in respect of which said application dated April 8, 1926, and this application are made, and copies of all resolutions of stockholders relating to the same;

Exhibit E. Copies of resolutions of the directors designating by name the executive officer by whom this application is signed and filed;

Exhibit F. Opinion of counsel; and

Exhibit G. Proofs of all securities in respect of which the application is made (specimens not being available).

Sixth. Attention is called to the provision on page 3 of the plan of reorganization that the dividends on the preferred stock are to accrue "from one year after the date on which possession of said properties shall be vested in the New Company [the applicant]." The petition for incorporation (filed herewith as Exhibit A) had to be filed at a time when it was not possible to determine that date, and January 1, 1928, was inserted therein as the date from which such dividends are to accrue. However, it was not intended that the above-quoted provision of the plan be altered, and provision is to be made by agreement or otherwise so that the dividends on the preferred stock will accrue as stated in the plan.

Wherefore, the applicant requests that your commission authorize the issue by the applicant in temporary or definitive form, and if in temporary form the issue of securities of like character in definitive form in exchange therefor, of the $5,180,344.07 par value of its preferred stock and the 150,000 shares without par value of its common stock, as described in said application dated April 8, 1926.

Dated, November 25, 1926.

Respectfully submitted.

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY,
By J. A. FOWLER, Jr., *Vice President.*

STATE OF GEORGIA,
County of Fulton, ss:

J. A. Fowler, jr., being duly sworn, deposes and says that he is an executive officer—to wit, vice president—of Atlanta, Birmingham

and Coast Railroad Company, the corporation described in and who executed the foregoing application; that he has read the foregoing application and has knowledge of the facts therein set forth; and that the same are true as therein stated; and that he has been duly authorized by said corporation to sign, verify, and file the foregoing application.

J. A. FOWLER, Jr.

Subscribed and sworn to before me this 25 day of November, 1926.

A. V. B. GILBERT, [NOTARIAL SEAL.]
Notary Public, State of Georgia at Large.

My commission expires March 12, 1929.

172A *Exhibit A to application*

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY—PETITION FOR INCORPORATION, VERIFIED NOVEMBER 17, 1926

Petition of purchasers of property of Atlanta, Birmingham & Atlantic Railway Company and associates for incorporation of Atlanta, Birmingham and Coast Railroad Company

To the honorable the Secretary of State of the State of Georgia:

Your petitioners, George E. Roosevelt, whose residence is No. 15 East 82nd Street, in the city of New York, New York; J. A. Fowler, jr., whose residence is in the village of Bayside, county of Queens, State of New York; E. R. Everett, whose residence is Atlanta, Ga.; B. L. Bell, whose residence is Atlanta, Ga.; and A. V. B. Gilbert, whose residence is Atlanta, Ga., desiring to be incorporated as and to form a railroad company under and in accordance with the statutes of the State of Georgia, respectfully show that—

First. At a public judicial sale held upon the premises at the Haynes Street freight station of Atlanta, Birmingham & Atlantic Railway Company near the intersection of Haynes Street and Hunter street, in the city of Atlanta, in the county of Fulton and State of Georgia, on the 22nd day of June, 1926, at 11 o'clock in the forenoon, central time, pursuant to a certain decree of foreclosure and sale made in the cause entitled "Birmingham Trust & Savings Company, complainant, against Atlanta, Birmingham & Atlantic Railway Company, defendant, consolidated cause in Equity No. 156," and the constituent causes in Equity Nos. 156, 188, 187, and 190, under date of April 30, 1926, by the District Court of the United States for the Northern District of Georgia, Northern Division, and thereafter adopted, rendered, and pronounced; on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Georgia; on May 3, 1926, as the decree of the District Court of the United States for the Middle District of Alabama; on May 5, 1926, as the decree of the District Court of the United States for the Northern District of Alabama; and on May 3, 1926, as the decree of the District Court of the United States for

the Southern District of Florida, your petitioners, George E. Roosevelt and J. A. Fowler, jr., hereinafter sometimes called the purchasers, made a conditional bid for all the property and assets of every kind and character of Atlanta, Birmingham & Atlantic Railway Company and/or B. L. Bugg, as receiver of said Atlanta, Birmingham & Atlantic Railway Company, including (but without limiting the generality of the foregoing):

(a) All that certain line of railroad, beginning in or at the city of Brunswick, in the county of Glynn, and running thence through the counties of Glynn, Brantley, Pierce, Bacon, Wilcox, Coffee, Irwin, Ben Hill, Turner, Crisp, Dooly, Macon, Taylor, Talbot, Meriwether, Coweta, Fayette, Campbell, and Fulton to and into the city of Atlanta, in said county of Fulton, all in the State of Georgia, and also that certain branch line of railroad beginning in or at the town of Sessoms, in said county of Bacon, and running thence through said county of Bacon and the county of Ware to and into the city of Waycross, in said county of Ware, all in the State of Georgia, and also that branch line of railroad beginning in or at the city of Fitzgerald, in said county of Ben Hill, and running thence through said counties of Ben Hill and Irwin and through the counties of Tift, Colquitt, and Thomas to and into the city of Thomasville, in said county of Thomas, all in the State of Georgia;

(b) All that certain line of railroad, beginning in or at the town of Manchester, in said county of Meriwether, and running thence through said county of Meriwether, and the county of Troup, all in the State of Georgia, and through the counties of Chambers, Randolph, Clay, Talladega, Shelby, and Jefferson, all in the State of Alabama, to and into the city of Birmingham, in said county of Jefferson, State of Alabama;

(c) All branches, sidings, tracks, yards, terminals, stations, buildings, towers, freight houses, roundhouses, turntables, shops, telephone lines, telegraph lines, and all property of every kind and description, real or personal, now used or operated in connection with any of said lines of railroad;

(d) All those certain parcels situated in the county of Duval, State of Florida, more particularly described in an indenture dated August 23, 1917, between said Atlanta, Birmingham & Atlantic Railway Company and said The Equitable Trust Company of New York, as trustee, recorded in the public records of Duval County, Florida, on November 8, 1917, in mortgage book No. 113 on page No. 534.

Together with all and singular the tenements, hereditaments, and appurtenances belonging or in anywise appertaining to said lines of railroad and the branches and extensions thereof and the other properties hereinabove mentioned, or to any part thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, as well in law as in equity, of said Atlanta, Birmingham & Atlantic Railway Company and/or said B. L. Bugg, as receiver as aforesaid, in and to the same and every part and parcel thereof,

and any and all corporate or other rights, privileges, and franchises which said Atlanta, Birmingham & Atlantic Railway Company and/or said B. L. Bugg, as receiver as aforesaid, now has, for or appertaining to the ownership, construction, maintenance, use, and/or operation of the lines of railroad and other properties hereinabove mentioned;

(e) All franchises, locomotives, cars, equipment, materials and supplies, and real estate situated in the States of Georgia, Alabama, and Florida, and shares of stock, cash and receivables, and other property, real and personal.

The said property and assets were so offered for sale and bid for subject to certain liens and conditions more particularly described in said decree of foreclosure and sale. For a more particular description of the property and assets purchased and the liens and conditions subject to which the same were offered for sale and were bid for as aforesaid, reference is hereby made to said decree of foreclosure and sale, and especially to Articles XXVI and XXXII thereof.

The said bid of the said purchasers was thereafter accepted, approved, ratified, and confirmed (subject to and conditioned, among other things, as more particularly appears from the decree of confirmation of sale first hereinafter mentioned, upon the making of an order or orders by the Interstate Commerce Commission pursuant to the application on behalf of the Atlanta, Birmingham and Coast Railroad Company, the company to be incorporated pursuant to this petition (I. C. C. Finance Docket 5454), and in the application of the Atlantic Coast Line Railroad Company (I. C. C. Finance Docket 5470), respectively, conferring authority sought in said applications substantially sufficient to enable the parties thereto to carry out the plan and agreement of reorganization, dated February 23, 1926, for the reorganization of Atlanta, Birmingham & Atlantic Railway Company) by a certain decree of confirmation of sale made in the cause entitled "Birmingham Trust & Savings Company, complainant, against Atlanta, Birmingham & Atlantic Railway Company, defendant, consolidated cause in equity No. 156," and the constituent causes in equity Nos. 156, 188, 187, and 190: on June 23, 1926, by the District Court of the United States for the Northern District of Georgia, Atlanta Division, and thereafter adopted, rendered, and pronounced; on June 25, 1926, as the decree of the District Court of the United States for the Middle District of Georgia; on July 1, 1926, as the decree of the District Court of the United States for the Middle District of Alabama; on June 26, 1926, as the decree of the District Court of the United States for the Northern District of Alabama; and on June 26, 1926, as the decree of the District Court of the United States for the Southern District of Florida.

The said Interstate Commerce Commission did, on the 26th day of October, 1926, on said applications, Finance Dockets No. 5454, afore-

said, enter its order substantially conferring the authority sought, as aforesaid, and thereafter the said sale to the said purchasers was unconditionally confirmed, ratified, and approved by a certain decree of confirmation made in the said cause entitled "Birmingham Trust & Savings Company, complainant, against Atlanta, Birmingham & Atlantic Railway Company, defendant, consolidated cause, in equity No. 156" and the constituent causes in equity Nos. 156, 188, 187, and 190; on November 16, 1926, by the District Court of the United States for the Northern District of Georgia, Atlanta Division, and thereafter adopted, rendered and pronounced; on November 22, 1926, as the decree of the District Court of the United States for the Middle District of Georgia; on November 22, 1926, as the decree of the District Court of the United States for the Middle District of Alabama; on November 22, 1926, as the decree of the District Court of the United States for the Northern District of Alabama; and on November 22, 1926, as the decree of the District Court of the United States for the Southern District of Florida. Upon such last-mentioned confirmation your petitioners, George E. Roosevelt and J. A. Fowler, jr., became the purchasers of the said property and assets.

Albert G. Foster, Esq., as special master appointed in and by said decree of foreclosure and sale, has duly executed and delivered a deed dated November 16, 1926, conveying, transferring, and assigning to your petitioners, George E. Roosevelt and J. A. Fowler, jr., all of the property and assets sold to them at said sale held on June 22, 1926, as above described, in the execution of which deed said Atlanta, Birmingham & Atlantic Railway Company and said B. L. Bugg, as receiver in the above-mentioned causes, and each of them, have respectively joined, and in the execution of which deed the Old Colony Trust Company, as trustee under the first mortgage and the supplemental mortgage hereinafter referred to of Atlantic & Birmingham Railway Company, and the Irving Bank-Columbia Trust Company, as trustee under the income mortgage hereinafter referred to of Atlanta, Birmingham & Atlantic Railway Company, have respectively joined for the purpose of respectively conveying to the said purchasers all of their respective right, title, and interest as such trustees respectively of, in and to the property and assets so conveyed, assigned, or transferred by the said special master; and by said deed the said purchasers have duly acquired title to said property and assets.

Second. Said decree of foreclosure and sale foreclosed a certain mortgage or deed of trust dated January 1, 1904 (hereinafter sometimes called the "first mortgage"), executed by Atlantic & Birmingham Railway Company to Old Colony Trust Company, a Massachusetts corporation, as trustee, and conveying to said trustee all the property therein described for the purpose of securing an issue of first-mortgage five per cent 5/30 gold coupon bonds of said Atlantic & Birmingham Railway Company, and a certain supplemental

mortgage or deed of trust, dated September 3, 1904, executed by said Atlantic & Birmingham Railway Company to said Old Colony Trust Company, trustee. The first mortgage and said suplemental mortgage were duly recorded as required by law. In and by said decree it was found, ordered, adjudged, and decreed that $4,090,000 principal amount of said first mortgage bonds were outstanding.

Said decree of foreclosure and sale also foreclosed a certain indenture of mortgage and deed of trust dated November 1, 1915 (hereinafter sometimes called the "income mortgage"), executed by Atlanta, Birmingham & Atlantic Railway Company to Columbia Trust Company, now called Irving Bank-Columbia Trust Company, a New York corporation, as trustee, and conveying to said trustee the property therein described for the purpose of securing an issue of fifteen year five per cent income mortgage gold bonds of said Atlanta, Birmingham & Atlantic Railway Company to an aggregate principal amount not to exceed $5,200,000. The income mortgage was duly recorded as required by law. In and by said decree it was found, ordered, adjudged, and decreed that $4,943,906.78 principal amount of said income mortgage bonds, including scrip certificates representing fractional interests in said income mortgage bonds, were outstanding. Said decree also ordered and decreed the sale of all unmortgaged property of said Atlanta, Birmingham & Atlantic Railway Company.

Third. Said Atlantic & Birmingham Railway Company was duly organized and existed and was endowed with corporate capacity under the laws of the State of Georgia as evidenced by a certificate duly issued by the secretary of state of the State of Georgia on January 2, 1904, and divers other certificates of said secretary of state amendatory of and supplemental to said original certificate; said Atlanta, Birmingham & Atlantic Railway Company was duly organized and existed and was endowed with corporate capacity under the laws of the State of Georgia by a certificate duly issued by the secretary of state of the State of Georgia on August 10, 1914, and divers other certificates of said secretary of state amendatory of and supplemental to said original certificate; and all of said certificates are of record in the office of the secretary of state of Georgia.

Fourth. Your petitioners, George E. Roosevelt and J. A. Fowler, jr., the purchasers as aforesaid, have associated with themselves the other petitioners above named with the intent and for the purpose of organizing a corporation under the provisions of article 6 of chapter 2 of the second title of the Civil Code of the State of Georgia and under paragraphs 2585 and 2586 of said code. Your petitioners, George E. Roosevelt and J. A. Fowler, jr., the purchasers as aforesaid, and their above-named associates, request to be substituted for the original petitioners and stockholders of said Atlantic & Birmingham Railway Company and said Atlanta, Birmingham & Atlantic Railway Company, with all their powers, rights, privileges, duties, and liabilities under said article 6; and your petitioners hereby re-

quest that they may hereafter exercise and enjoy the same rights, privileges, grants, franchises, immunities, and advantages in or by the first mortgage and said supplemental mortgage and the income mortgage enumerated and conveyed which belonged to and were enjoyed by said Atlantic & Birmingham Railway Company and by said Atlanta, Birmingham & Atlantic Railway Company, respectively, so far as the same relate or appertain to that portion of said road or the part or line thereof mentioned or described and conveyed by said mortgages, respectively, and/or sold and purchased as aforesaid, as fully and absolutely in all respects as said Atlantic & Birmingham Railway Company and/or said Atlanta, Birmingham & Atlantic Railway Company and the officeholders, shareholders, and agents of such companies, respectively, might or could have had, had not such sale or purchase taken place, and that they may also hereafter exercise and enjoy all other rights, powers, privileges, grants, franchises, immunities, and advantages now or hereafter conferred upon or exercised or enjoyed by railroad companies incorporated under the laws of the State of Georgia.

Fifth. The name of the railroad company (hereinafter sometimes called the "company") which your petitioners desire to have incorporated is Atlanta, Birmingham and Coast Railroad Company.

Sixth. The length of railroad which it is proposed that the company shall acquire is six hundred forty and thirty-five one hundreds (640.35) miles, more or less.

The general direction of the said railroad is northwest and southeast.

The counties in or through which the main and branch lines of said railroad now run are as specified in article first hereof.

The names of the principal places from which and to which said lines of railroad are now constructed are as specified in article first hereof.

Seventh. The number of shares of the capital stock of the company which it is proposed to issue shall be fifty-two thousand (52,000) shares of preferred stock of the par value of one hundred dollars ($100) each and one hundred fifty thousand (150,000) shares of common stock without par value. The respective preferences, restrictions, qualities, rights, and privileges of the preferred stock and the common stock shall be as follows:

(1) The holders of shares of the preferred stock shall be entitled to receive cumulative cash dividends at the rate of five per centum (5%) per annum and no more, payable semiannually in equal installments on the first days of January and July in each year. Such dividends on the preferred stock shall be cumulative and accrue from January 1, 1928 (except that in the case of preferred stock issued after said date the dividends on such stock shall be cumulative and accrue only from the date on which such stock shall have been issued), so that if cash dividends at the rate of five per centum (5%) per annum for all past semiannual dividend periods shall not

have been paid on the outstanding preferred stock and the dividend at said rate for the then current semiannual dividend period shall not have been paid or declared and funds set apart therefor, dividends at said rate for all past semiannual dividend periods shall be fully paid and the dividend at said rate for the then current semiannual dividend period shall be paid or declared and funds set apart therefor, before any dividend shall be declared or paid upon or set apart for the common stock. Whenever dividends at the rate of five per centum (5%) per annum upon the outstanding preferred stock for all past semiannual dividend periods shall have been paid in full and the dividend at said rate for the then current semiannual dividend period shall have been paid or declared and funds set apart therefor, such dividends as may be determined by the board of directors may from time to time be declared and paid upon the common stock.

(2) The company at its option may redeem the whole of the preferred stock at the time outstanding, but not a part thereof, on any semiannual dividend payment date after January 1, 1935, by paying the redemption price of one hundred and three dollars ($103) in cash for each share, together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date fixed for redemption, less the aggregate amount of all cash dividends theretofore paid thereon. At least three (3) months' previous notice of such redemption shall be given by the company to the holders of record of the preferred stock by mailing such notice, postage prepaid, to each holder of record of preferred stock at his address as it appears upon the books of the company for dividend payments, and by publishing such notice of redemption once a week for four (4) successive weeks in a daily newspaper of general circulation in the borough of Manhattan, city of New York, and in a daily newspaper of general circulation in the city of Boston, Massachusetts, and, if the Commercial and Financial Chronicle, a financial magazine published weekly in the borough of Manhattan, city of New York, be then published, in the Commercial and Financial Chronicle, the first publication in each case to be at least thirty (30) days prior to the date fixed for redemption in such notice. Notice having been duly given by mail and by publication as aforesaid, if on or before the redemption date named in such notice the funds necessary for such redemption shall have been set aside so as to be and continue to be available therefor, then from and after the redemption date fixed in such notice the right to receive dividends on the preferred stock thereby called for redemption shall cease to accrue and all rights of the holders thereof as stockholders of the company shall cease and determine, except the right to receive the said redemption price, together with a sum equal to five per centum (5%) per annum upon the preferred stock from

the date on which dividends on such preferred stock became cumulative to the date fixed for the redemption, less the aggregate amount of all cash dividends theretofore paid thereon.

(3) Upon any liquidation, dissolution, or winding up of the affairs of the company, whether voluntary or involuntary, except in case of redemption as aforesaid, before any distribution shall be made to the holders of the common stock the holders of the preferred stock shall be entitled to be paid in cash the par value of their preferred stock, together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date of such payment, less the aggregate amount of all cash dividends theretofore paid thereon. After such payment to the holders of the preferred stock, the remaining assets, if any, of the company may be divided and distributed among the holders of the common stock according to their respective shares.

(4) So long as any of said preferred stock shall be out-standing the company shall not, without the consent of the holders of record of three-fourths of the then outstanding preferred stock, given in writing or by affirmative vote at a meeting of the stockholders of the company or at a meeting of the holders of preferred stock duly called and held for the purpose in the manner provided in the by-laws of the company, (a) issue any preferred stock in addition to the said fifty-two thousand (52,000) shares, or (b) issue any preferred stock ranking on a parity with or having priority over the preferred stock; provided, however, that no vote in respect of any of the matters specified in the foregoing clauses (a) and (b) shall be had or taken at any meeting of the stockholders or of the holders of preferred stock, unless (i) the notice of such meeting shall state that it is proposed at the said meeting to vote upon one or more of the said matters, and shall specify which of said matters it is proposed to so vote upon, and (ii) such notice of such meeting shall have been mailed at least ten (10) days prior to the date fixed in such notice for such meeting and to each holder of record of preferred stock at his address as it then appears upon the stock transfer books of the company, and (iii) such other notice, if any, of such meeting shall have been given as may then be required by law or by the by-laws of the company. The preferences, restrictions, qualities, rights, and privileges of the preferred stock shall not be amended or altered so long as any of the preferred stock shall be outstanding.

(5) Subject to the provisions of paragraph (4) of this article seventh, the holders of the common stock shall exclusively possess voting powers both for the election of directors and for all other purposes except as follows: If the company shall be in default in the payment of two semiannual dividends on the preferred stock, then and in every such case, so long and only so long as any part of any semiannual dividend on the preferred stock shall remain unpaid, the holders of the preferred stock shall have the exclusive voting powers

both for the election of directors and for all other purposes. When, however, full semiannual dividends on the preferred stock for all past dividend periods shall have been paid by the company, then and thereafter such voting powers of the holders of preferred stock shall cease and the exclusive voting powers of the holders of the common stock shall be restored, subject, however, to such voting powers of the holders of the preferred stock being revived from time to time in case of any subsequent default in the payment of two semiannual dividends on the preferred stock.

Each holder of either class of stock which shall possess voting power upon any matter shall be entitled to one vote on such matter for each share of such class of stock registered in his name on the books of the company.

Notice of all meetings of the stockholders shall be given to the holders of common stock in the manner at the time prescribed by law and/or by the by-laws of the company, whether or not the company at the time shall be in default in respect of dividends upon the preferred stock. Notice of all meetings of the stockholders, or of the holders of preferred stock, at which the holders of preferred stock shall be entitled to vote, whether by reason of a default in respect of dividends upon the preferred stock or for any other reason, shall be given in like manner to the holders of preferred stock, provided, however, that notice of all meetings of the stockholders, or of the holders of preferred stock at which any of the matters specified in any of the foregoing clauses (a) and (b) of paragraph (4) of this article seventh are to be voted upon shall, in addition, be given to the holders of preferred stock in the manner specified in said paragraph (4). Except as hereinbefore otherwise provided, the holders of preferred stock shall not be entitled to notice of any meetings of the stockholders.

Shares of stock shall be transferable only on the books of the company in such manner and under such regulations as the by-laws may provide. The books for the transfer of the preferred stock and/or common stock of the company may be closed by resolution of the board of directors for the period of not exceeding thirty days prior to the day of holding any meeting of stockholders or to the day appointed for the payment of any dividend. In lieu of closing transfer books, the board of directors may by resolution fix a record date not more than thirty days prior to the day of holding any meeting of stockholders or to the day appointed for the payment of any dividend, and only registered holders of stock on such record date shall be entitled to notice and to vote at such meeting or to receive such dividend, as the case may be.

Eighth. The company may issue and dispose of all or any of the said fifty-two thousand shares of preferred stock and all or any of said one hundred fifty thousand shares of common stock for such cash, property, real or personal, or other consideration and upon such terms or conditions as may be determined from time to time

by the board of directors and permitted by law, but at least $1,000 shall be paid in for such nonpar value common stock in cash or in tangible assets at their fairly appraised valuation before the company shall begin business; and, without limiting the generality of the foregoing, authority is hereby conferred for the issue of all or any of said fifty-two thousand shares of preferred and/or said one hundred and fifty thousand shares of common stock for the purpose of acquiring and paying for the property and assets described in article first hereof and for the purpose of carrying out the above-mentioned plan and agreement of reorganization dated February 23, 1926. Any and all shares issued as in this article eighth provided shall be deemed fully paid and nonassessable, and the holders of such shares shall not be liable to the company or to its creditors in respect thereof.

The company shall be authorized to issue, in addition to preferred stock and/or common stock and without the assent of the holders of the preferred stock or of the common stock, except as such assent may be required by law, notes and/or bonds whether or not secured by mortgage or trust deed covering or conveying the railroad properties of the company, including equipment and/or other property or assets of the company.

Ninth. The number of years the company is to continue is one hundred and one (101) years, with such privilege of successive renewals as may be authorized by law.

Tenth. The place where the principal office of the company is to be located is the city of Atlanta, Fulton County, Georgia.

Wherefore your petitioners pray that the honorable secretary of state of the State of Georgia will issue, under the great seal of said State, a certificate in accordance with the laws of said State granting unto your petitioners, their successors and assigns, full authority to be a corporation by and under the name hereinabove specified, with all the rights, powers, privileges, grants, franchises, immunities, and advantages above requested, and for the purposes above stated.

GEORGE E. ROOSEVELT.
J. A. FOWLER, Jr.

STATE OF NEW YORK,
County of New York, ss:

Before the undersigned, a notary public in and for said State and county, personally appeared the above-named George E. Roosevelt and J. A. Fowler, jr., being the purchasers and two of the petitioners mentioned and described in the foregoing petition, and on oath deposed that the matters set forth in the above petition by them subscribed are true to the best of their knowledge and belief.

Witness my hand and official seal this 17th day of November, 1926.

[NOTARIAL SEAL.] ANNE KARLSON,
Notary Public.

N. Y. County clerk's No. 340; N. Y. County register's No. 8364.
Commission expires March 30, 1928.

172B *Exhibit B to application*

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY—CERTIFICATE OF SECRETARY OF STATE, DATED NOVEMBER 22, 1926

STATE OF GEORGIA,
OFFICE OF THE SECRETARY OF STATE,
Atlanta, Georgia.

To all to whom these presents may come, Greeting:

Whereas, George E. Roosevelt and J. A. Fowler, jr., became the purchasers of the railroad, properties, appurtenances, equipment, rights, and franchises of the Atlanta, Birmingham & Atlantic Railway Company, a corporation organized under the laws of the State of Georgia, at a judicial sale held June 22, 1926, pursuant to a certain decree of foreclosure and sale made in the cause entitled "Birmingham Trust & Savings Company, complainant, against Atlanta, Birmingham & Atlantic Railway Company, defendant, consolidated cause in equity No. 156," and the constituent causes in equity Nos. 156, 188, 187, and 190, which said decree was entered under date of April 30, 1926, by the District Court of the United States for the Northern District of Georgia (now Atlanta Division) and thereafter adopted, rendered, and pronounced on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Georgia and on May 3, 1926, as the decree of the District Court of the United States for the Middle District of Alabama; on May 5, 1926, as the decree of the District Court of the United States for the Northern District of Alabama; and on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Florida; and

Whereas, the said George E. Roosevelt and J. A. Fowler, jr., as purchasers as aforesaid, have associated with them E. R. Everett, B. L. Bell, and A. B. Gilbert, all of Atlanta, Ga., and the said Roosevelt and Fowler and their said associates have filed in the office of the secretary of state of the State of Georgia a certain petition for the purpose of organizing a railroad company to maintain and operate the said property so purchased under and by virtue of the second title, chapter 2, article 6 of section 1, division 3, of the code of Georgia of 1910, and especially sections 2585, subdivisions 11 and 12 of the said code of Georgia, said petition being filed in pursuance of an act of the General Assembly of the State of Georgia, approved December 7, 1892, and an act amendatory thereof approved December 15, 1894, and an act of the General Assembly approved August 1, 1922, and an act of the General Assembly approved August 22, 1925, and an act of the General Assembly approved March 30, 1926.

It is prayed by said purchasers and their associates

That said corporation shall have the right to continue for a period of one hundred one (101) years with the right of successive renewals; and

That the capital stock of said corporation shall consist of one hundred and fifty thousand (150,000) shares of common stock without par value and of five million two hundred thousand ($5,200,000.00) dollars par value of preferred stock divided into 52,000 shares of the par value of one hundred ($100) dollars each, having the preferences, restrictions, and qualities set out in said petition for incorporation; and

That the corporation shall be known as Atlanta, Birmingham and Coast Railroad Company, and that it shall have all the rights, powers, privileges, and immunities heretofore owned and/or enjoyed by said Atlanta, Birmingham & Atlantic Railway Company; and

That Atlanta, Birmingham and Coast Railroad Company shall have the right and power to own the lines of railroad and other properties, rights, privileges, and franchises formerly owned by the Atlanta, Birmingham & Atlantic Railway Company, including all franchises of whatsoever nature which may be or at any time have been possessed by the Atlanta, Birmingha & Atlantic Railway Company, which said properties are described in the petition for incorporation filed by said purchasers and their associates in this behalf and in said decree of foreclosure, all of which are referred to; and

That said purchasers and their associates be substituted for the original petitioners and stockholders of the Atlantic & Birmingham Railway and the Atlanta, Birmingham & Atlantic Railway, with all their rights, privileges, duties, and liabilities under said article 6; and that they may thereafter exercise and enjoy the same rights, privileges, grants, franchises, immunities, and advantages in or by the first mortgage and supplemental mortgage and the income mortgage enumerated and conveyed which belonged to and were enjoyed by said Atlantic & Birmingham Railway Company and by said Atlanta, Birmingham & Atlantic Railway Company, respectively, so far as the same appertain or relate to said portion of the road or the part or line thereof mentioned or described and conveyed by said mortgages, respectively, and/or sold and purchased as aforesaid, as fully and absolutely in all respects as said Atlantic & Birmingham Railway Company and/or said Atlanta, Birmingham & Atlantic Railway Company and the office holders, shareholders, and agents of said companies, respectively, might or could have had, had any such sale or purchase not taken place, and that they may also thereafter exercise and enjoy all other rights, powers, privileges, grants, franchises, immunities, and advantages now or hereafter conferred upon or exercised or enjoyed by railroad companies incorporated under the laws of the State of Georgia.

Therefore, the State of Georgia hereby grants unto the above-named purchasers and their associates, their successors and assigns, the powers, privileges, and franchises of a corporation, with full authority by and under the name of Atlanta, Birmingham and Coast Railroad Company to exercise the powers, privileges, and franchises

of a corporation with the rights, powers, privileges, grants, franchises, immunities, and advantages conferred by law in such cases, and those prayed for in said petition for incorporation, and to maintain and operate the said railroad as prayed for, subject to article 4 of the constitution of this State, and all laws governing railroad companies at the date hereof, and that hereafter may become of force either by constitutional or statutory law, or by any rule or regulation of the Georgia Public Service Commission or otherwise, which legally govern or control the operation of railroads in this State. Provided, however, that before said corporation shall begin business as a corporation there must be at least one thousand ($1,000) dollars paid in for such nonpar value common stock either in cash or in tangible assets at their fairly appraised valuation.

In witness whereof these presents have been signed by the secretary of state and to which is annexed the great seal of the State, at Atlanta, Georgia, this 22 day of November, 1926.

S. G. McLENDON,
Secretary of State of the State of Georgia.

[Extract from incorporators' minutes]

The chairman reported that the original petition for incorporation had been filed in the office of the secretary of state of the State of Georgia on November 22, 1926, and that all filing and recording fees and charges had been duly paid and that said secretary of state had issued his certificate of incorporation. The secretary thereupon presented to the meeting a certified copy of the petition for incorporation and the certificate of incorporation. On motion duly made and seconded it was unanimously

"RESOLVED, That the certificate of incorporation issued by the secretary of state of the State of Georgia presented to the meeting be, and hereby is, in all respects accepted, and that the same with the certified copy of the petition for incorporation presented to the meeting be placed in the archives of the company, and that copies thereof be placed in the minute book following the minutes of this meeting."

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the incorporators of Atlanta, Birmingham and Coast Railroad Company, duly held at Atlanta, Georgia, on November 24, 1926, at which a quorum were present and participated.

[CORPORATE SEAL.] J. A. FOWLER, Jr.,
Secretary.

172C *Exhibit C to Application*

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY—BY-LAWS

Article I. The annual meeting of the stockholders of the company shall be held at the office of the company in the City of Atlanta, Georgia, on the Friday after the third Tuesday in April of each

year, and due notice thereof shall be given by the Secretary of the Company as provided by law; provided, however, that notice of every annual meeting of the stockholders at which holders of preferred stock are entitled to vote upon any matter, shall, in addition to any notice required by law, be given as provided in the petition for incorporation.

Article II. Special meetings of the stockholders of the company may be called by the board of directors or by stockholders who together hold ten per cent (10%) of the stock entitled for the time being to vote for the election of directors, and meetings of the holders of preferred stock of the company may be called by the board of directors. Notice of all such meetings shall be given as provided by law, provided, however, that notice of every meeting of the holders of preferred stock, and notice of every meeting of the stockholders at which holders of preferred stock are entitled to vote upon any matter, shall, in addition to any notice required by law, be given as provided in the petition for incorporation.

Article III. The officers of the company shall be a board of five directors, a president, one or more vice-presidents, a secretary, a treasurer, an auditor, and such other officers and agents as the board of directors may from time to time appoint. The directors shall be elected as provided in the petition for incorporation. The board of directors shall select from their number a president and may elect one or more vice-presidents and may appoint a secretary, a treasurer, an auditor, and such other officers as they may deem necessary. Any director or other officer may resign by giving written notice of his resignation to the president or any vice-president and such resignation shall take effect at the time specified therein; and, unless so specified therein, the acceptance of such resignation shall not be necessary to make it effective. Vacancies in the board of directors or in any other offices however occurring, may be filled by the board of directors.

Article IV. The affairs of the company shall be managed by the board of directors. Regular meetings of the board of directors shall be held at such times and places as may be prescribed by the board of directors. The president may call special meetings of the board of directors.

There shall be an executive committee to consist of three directors, or of the president and two directors, appointed by the board of directors, and such committee shall have power to approve any and all contracts made on behalf of this company and shall have general supervision of the financial affairs of this company and such other general powers as may be conferred upon it by the board of directors.

Article V. The president shall be the chief executive officer of the company and shall have such special powers and duties as the

board of directors may from time to time determine. The other officers shall have such powers and duties as the board of directors may from time to time determine.

Article VI. 1. The transfers of stock shall be made only on the books of the company by the person named in the stock certificate or by his attorney lawfully constituted, and upon surrender of such certificate properly indorsed.

2. The books for the transfer of the preferred stock and/or common stock may be closed by resolution of the board of directors for a period not exceeding thirty days prior to the day of holding any meeting of the stockholders or to the day appointed for the payment of any dividend. In lieu of closing the transfer books, the board of directors may by resolution fix a date not more than thirty days prior to the day of holding any meeting of stockholders or to the day appointed for the payment of any dividend, and only registered holders of stock on such record date shall be entitled to notice and to vote at such meeting, or to receive such dividend, as the case may be.

3. The company shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Georgia.

Article VII. These by-laws may be amended, altered or repealed and new by-laws adopted at any annual meeting of the stockholders or at any special meeting of the stockholders called for the purpose of taking action on such amendment, alteration or repeal, provided, however, that so long as any preferred stock of the company shall remain outstanding, the provisions contained in these by-laws relating to holders of preferred stock shall not be amended, altered or repealed.

I hereby certify that the foregoing is a true and correct copy of the by-laws of Atlanta, Birmingham and Coast Railroad Company.

Dated, November 25, 1926.

J. A. FOWLER, Jr.,
Secretary.

(Corporate Seal.)

172D *Exhibit D to application*

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY

[Extract from directors' minutes]

The chairman presented to the meeting a proposed agreement of sale between George E. Roosevelt and J. A. Fowler, jr., as purchasers

of the property and assets formerly belonging to Atlanta, Birmingham & Atlantic Railway Company and its receiver, and the reorganization committee under the plan and agreement of reorganization dated February 23, 1926, for the reorganization of Atlanta, Birmingham & Atlantic Railway Company, and the company. A copy of the agreement dated February 23, 1926, between the committees therein described and Atlantic Coast Line Railroad Company, and the plan and agreement of reorganization hereinabove mentioned were presented to the meeting, and the proposed agreement of sale was read at length to the meeting. On motion duly made and seconded, it was unanimously:

"RESOLVED, That the president or any vice president and the secretary or any assistant secretary of the company be and hereby are authorized and directed on behalf of the company to execute, acknowledge, and deliver in the name and on behalf of the company and under the common seal of the company an agreement with George E. Roosevelt and J. A. Fowler, jr., as purchasers, parties of the first part, and Francis R. Hart, George E. Warren, James H. Perkins, and George E. Roosevelt, as the reorganization committee constituted by the plan and agreement of reorganization dated February 23, 1926, for the reorganization of Atlanta, Birmingham & Atlantic Railway Company and not individually, as parties of the second part, and this company, as party of the third part, providing among other things for the sale and transfer to this company of the property and assets formerly belonging to Atlanta, Birmingham & Atlantic Railway Company and/or its receiver as more particularly mentioned therein, said agreement of sale to be in the form presented to this meeting (with such changes therein as may be consented to by the officers of the company executing the agreement, such consent to be evidenced by the execution and delivery of said agreement); and

"FURTHER RESOLVED, That the president or any vice president and the treasurer or any assistant treasurer of the company be and hereby are authorized and directed to execute, issue and deliver in accordance with the provisions of said agreement of sale (a) $5,180,344.07 par value of the preferred stock of the company and (b) 150,000 shares without par value of the common stock of the company, all of said shares of preferred stock and common stock to be fully paid and nonassessable, and that the officers of the company be and hereby are authorized, empowered, and directed to execute, seal, and deliver certificates for said preferred stock and for said common stock in accordance with said agreement of sale and with this resolution and to cause said certificates of said preferred stock to be duly countersigned, registered, and authenticated; and

"FURTHER RESOLVED, That the officers of the company be and hereby are authorized and directed from time to time to do or cause to be done such acts or things as they, or any of them, may deem neces-

sary, convenient, or proper to carry out and observe the terms and provisions of said agreement of sale, and the secretary is directed to insert the form of proposed agreement of sale presented to this meeting and the copies of the agreement dated February 23, 1926, between Atlantic Coast Line Railroad Company and the committees, and the plan and agreement of reorganization dated February 23, 1926, in the minute book of the company following the minutes of this meeting."

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the board of directors of Atlanta, Birmingham and Coast Railroad Company, duly held at Atlanta, Georgia, on November 24, 1926, at which a quorum was present at participated.

J. A. FOWLER, Jr.,
Secretary.

(Corporate seal.)

[Extract from stockholders' minutes]

The secretary presented the minutes of the meeting of the board of directors held this day. On motion, duly made and seconded, the following resolution was unanimously adopted:

"BE IT RESOLVED, That all action taken by the board of directors at its meeting held on November 24, 1926, and all of the resolutions adopted by said board at said meeting be and the same are hereby adopted, ratified, and approved."

I hereby certify that the foregoing is a true and correct extract from the minutes of a meeting of the stockholders of Atlanta, Birmingham and Coast Railroad Company, duly held at Atlanta, Georgia, on November 24, 1926, at which a quorum was presented and participated; and that the minutes of the meeting of the directors submitted to said meeting of stockholders included the above-quoted extract.

J. A. FOWLER, Jr.,
Secretary.

(Corporate seal.)

172E *Exhibit E to application*

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY

[Extract from directors' minutes]

The chairman presented to the meeting a copy of the application dated April 8, 1926, to the Interstate Commerce Commission, made on behalf of this company by the reorganization committee described in said application, together with a copy of the report and order

dated October 26, 1926, made by Division 4 of the Interstate Commerce Commission pursuant to said application (known as Finance Docket No. 5454). The chairman summarized the proceedings which had been taken in respect of said application and the application made by Atlantic Coast Line Railroad Company (known as Finance Docket No. 5470). The chairman also presented to the meeting a proposed application to the Interstate Commerce Commission to be made by this company in Finance Docket No. 5454. Thereupon, on motion duly made and seconded and unanimously carried, it was

"RESOLVED, That this company concur, join in, and adopt the application dated April 8, 1926, to the Interstate Commerce Commission, made on behalf of this company by the reorganization committee described in said application, and all the proceedings taken in connection with said application (known as (Finance Docket No. 5454); and

"FURTHER RESOLVED, That this company make and file an application to the Interstate Commerce Commission substantially in the form presented to this meeting; and A. V. B. Gilbert, president, J. A. Fowler, jr., vice president and secretary, and Robert Recket, assistant secretary, are hereby severally designated and authorized by the company to sign, verify, and file such application and any and all other applications or petitions necessary, convenient, or proper to procure the approval by the Interstate Commerce Commission under section 20a of the interstate commerce act, of the issuance of the securities described in said application, dated April 8, 1926, and to file the exhibits described in said proposed application and any and all other papers and to do or cause to be done any other acts or things necessary, convenient, or proper in said Finance Docket No. 5454 and/or in Finance Docket No. 5470 (the application of Atlantic Coast Line Railroad Company)."

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the board of directors of Atlanta, Birmingham and Coast Railroad Company, duly held at Atlanta, Georgia, on November 24, 1926, at which a quorum was present and participated.

J. A. FOWLER, Jr.,
Secretary.

(Corporate seal.)

172F *Exhibit F to application*

COTTON & FRANKLIN,
43 Exchange Place, New York City, November 25, 1926.

INTERSTATE COMMERCE COMMISSION,
Washington, D. C.:

We beg to advise that we have examined the application dated April 8, 1926, to the Interstate Commerce Commission made on behalf of

Atlanta, Birmingham and Coast Railroad Company for authority to issue certain securities under section 20a of the interstate commerce act in connection with the plan and agreement of reorganization dated February 23, 1926, for the reorganization of Atlanta, Birmingham & Atlantic Railway Company and the application dated November 25, 1926, of Atlanta, Birmingham and Coast Railroad Company (accompany this opinion) joining in and adopting said application dated April 8, 1926.

In pursuance of the circular issued by order of the commission, Division 4, dated July 22, 1924, relating to applications under section 20a, we beg to advise as principal attorneys of Atlanta, Birmingham and Coast Railroad Company, that in our opinion the issue of securities as proposed in said applications (1) is for some lawful object within the corporate purposes of Atlanta, Birmingham and Coast Railroad Company and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (2) is reasonably necessary and appropriate for such purpose, and will be legally authorized and valid if approved by the Interstate Commerce Commission.

Respectfully submitted.

COTTON & FRANKLIN,
Principal Attorneys.

172G *Exhibit G to application*

Rev. 1. Atlanta, Birmingham and Coast Rd. Co., A14280. 11-21-26. 16.

Temporary certificate—Exchangeable for engraved certificate when prepared

No. TP PREFERRED STOCK —— Shares

Atlanta, Birmingham and Coast Railroad Company, incorporated under the laws of the State of Georgia

THIS IS TO CERTIFY that ——— ——— is the owner of —— fully paid and nonassessable shares of the par value of $100.00 each of the preferred stock of Atlanta, Birmingham and Coast Railroad Company (hereinafter called the "Company"), transferable on the books of the company by the holder hereof in person, or by duly authorized attorney, upon surrender of this certificate properly endorsed. A statement of the respective preferences, restrictions, qualities, rights, and privileges, of the preferred stock and the common stock of the company is printed upon the back hereof; and this certificate and the shares represented hereby are issued and shall be subject to all the provisions of the petition for incorporation of the company (a copy of which is on file at the office of the transfer agent), to all of which the holder by acceptance hereof assents. This certificate is not valid until countersigned by the transfer agent and registered by the registar.

In witness whereof Atlanta, Birmingham and Coast Railroad Company has caused this certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this ———.

Assistant Treasurer. *Vice President.*

COUNTERSIGNED: By ——— *Transfer Agent.*

Registrar. By ———

REGISTERED:

Rev. 1, Atlanta, Birmingham and Coast Rd. Co., A14280, 11-21-26. 16.

Statement of the respective preferences, restrictions, qualities, rights, and privileges of the preferred stock and the common stock as contained in the petition for incorporation of Atlanta, Birmingham and Coast Railroad Company

The number of shares of the capital stock of the company which it is proposed to issue shall be fifty-two thousand (52,000) shares of preferred stock of the par value of one hundred dollars ($100) each and one hundred fifty thousand (150,000) shares of common stock without par value. The respective preferences, restrictions, qualities, rights, and privileges of the preferred stock and the common stock shall be as follows:

(1) The holders of shares of the preferred stock shall be entitled to receive cumulative cash dividends at the rate of five per centum (5%) per annum and no more, payable semi-annually, in equal installments, on the first days of July and January in each year. Such dividends on the preferred stock shall be cumulative and accrue from January 1, 1928 (except that in the case of preferred stock issued after said date the dividends on such stock shall be cumulative and accrue only from the date on which such stock shall have been issued), so that if cash dividends at the rate of five per centum (5%) per annum for all past semi-annual dividend periods shall not have been paid on the outstanding preferred stock and the dividend at said rate for the then current semi-annual dividend period shall not have been paid or declared and funds set apart therefor, dividends at said rate for all past semi-annual dividend periods shall be fully paid and the dividend at said rate for the then current semi-annual dividend period shall be paid or declared and funds set apart therefor, before any dividend shall be declared or paid upon or set apart for the common stock. Whenever dividends at the rate of five per centum (5%) per annum upon the outstanding preferred stock for all past semi-annual dividend periods shall have been paid in full and the dividend at said rate for the then current current semi-annual dividend period shall be paid or declared and semi-annual dividend period shall have been paid or declared and funds set apart therefor, such dividends as may be determined by the board of directors may from time to time be declared and paid upon the common stock.

(2) The company at its option may redeem the whole of the preferred stock at the time outstanding, but not a part thereof, on any semi-annual dividend payment date after January 1, 1935, by paying the redemption price of one hundred and three dollars ($103) in cash for each share, together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date fixed for redemption, less the aggregate amount of all cash divi-

dends theretofore paid thereon. At least three (3) months' previous notice of such redemption shall be given by the company to the holders of record of the preferred stock by mailing such notice, postage prepaid, to each holder of record of preferred stock at his address as it appears upon the books of the company for dividend payments, and by publishing such notice of redemption once a week for four (4) successive weeks in a daily newspaper of general circulation in the Borough of Manhattan, city of New York, and in a daily newspaper of general circulation in the city of Boston, Massachusetts, and, if the Commercial and Financial Chronicle, a financial magazine published weekly in the Borough of Manhattan, city of New York, be then published, in the Commercial and Financial Chronicle, the first publication in each case to be at least thirty (30) days prior to the date fixed for redemption in such notice. Notice having been duly given by mail and by publication as aforesaid, if on or before the redemption date named in such notice the funds necessary for such redemption shall have been set aside so as to be and continue to be available therefor, then from and after the redemption date fixed in such notice, the right to receive dividends on the preferred stock thereby called for redemption shall cease to accrue and all rights of the holders thereof as stockholders of the company shall cease and determine, except the right to receive the said redemption price, together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date fixed for the redemption, less the aggregate amount of all cash dividends theretofore paid thereon.

(3) Upon any liquidation, dissolution or winding up of the affairs of the company, whether voluntary or involuntary, except in case of redemption as aforesaid, before any distribution shall be made to the holders of the common stock the holders of the preferred stock shall be entitled to be paid in cash the par value of their preferred stock together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date of such payment, less the aggregate amount of all cash dividends theretofore paid thereon. After such payment to the holders of the preferred stock, the remaining assets, if any, of the company may be divided and distributed among the holders of the common stock according to their respective shares.

(4) So long as any of said preferred stock shall be outstanding, the company shall not, without the consent of the holders of record of three-fourths of the then outstanding preferred stock given in writing or by affirmative vote at a meeting of the stockholders of the company or at a meeting of the holders of preferred stock duly called and held for the purpose in the manner provided in the by-laws of the company, (a) issue any preferred stock in addition to the said fifty-two thousand (52,000) shares, or (b) issue any

preferred stock ranking on a parity with or having priority over the preferred stock; provided, however, that no vote in respect of any of the matters specified in the foregoing clauses (a) and (b) shall be had or taken at any meeting of the stockholders or of the holders of preferred stock unless (i) the notice of such meeting shall state that it is proposed at the said meeting to vote upon one or more of the said matters, and shall specify which of said matters it is proposed to so vote upon, and (ii) such notice of such meeting shall have been mailed at least ten (10) days prior to the date fixed in such notice for such meeting and to each holder of record of preferred stock at his address as it then appears upon the stock transfer books of the company, and (iii) such other notice, if any, of such meeting shall have been given as may then be required by law or by the by-laws of the company. The preferences, restrictions, qualities, rights, and privileges of the preferred stock shall not be amended or altered, so long as any of the preferred stock shall be outstanding.

(5) Subject to the provisions of paragraph (4) hereof, the holders of the common stock shall exclusively possess voting powers both for the election of directors and for all other purposes except as follows: If the company shall be in default in the payment of two semi-annual dividends on the preferred stock, then and in every such case, so long and only so long as any part of any semi-annual dividend on the preferred stock shall remain unpaid, the holders of the preferred stock shall have the exclusive voting powers both of the election of directors and for all other purposes. When, however, full semi-annual dividends on the preferred stock for all past dividend periods shall have been paid by the company, then and thereafter such voting powers of the holders of preferred stock shall cease and the exclusive voting powers of the holders of the common stock shall be restored, subject, however, to such voting powers of the holders of the preferred stock being revived from time to time in case of any subsequent default in the payment of two semi-annual dividends on the preferred stock.

Each holder of either class of stock which shall possess voting power upon any matter shall be entitled to one vote on such matter for each share of such class of stock registered in his name on the books of the company.

Guaranty

For value received, Atlantic Coast Line Railroad Company hereby guarantees to the registered holders from time to time of the shares of preferred stock of Atlanta, Birmingham and Coast Railroad Company (hereinafter called said company) represented by the within stock certificate the due and punctual payment to such registered holders, upon each July 1 and January 1 beginning on July 1, 1928, of an amount equal to 2½% of the par value of such shares,

and also guarantees to such registered holders that, in the event of any liquidation, dissolution or winding up, voluntary or involuntary, of said company or in the event of any merger or consolidation of said company or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of said company, such registered holders shall receive, at or prior to the happening of such event, payment of the dedemption price of $—— in cash for each of such shares together with a sum equal to 5% per annum of the par value of such shares from January 1, 1928, to the date fixed for redemption less the aggregate amount of all cash dividends theretofore paid thereon. This guaranty is absolute and unconditional. This guaranty is made under and subject to the provisions of a guaranty agreement dated as of ———, 1926, made between Atlantic Coast Line Railroad Company and the Chase National Bank of the city of New York, as trustee, to which reference is hereby made for the rights of the holders of the within certificate in respect of this guaranty and to all the terms of which such holders by acceptance hereof assents.

ATLANTIC COAST LINE RAILROAD COMPANY.

For value received —— hereby sell, assign and transfer unto ——— ——— ——— shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint ——— ——— attorney to transfer the said stock on the books of the within-named company with full power of substitution in the premises.

Dated ———, 19—.

——— ———.

In presence of—

——— ———.

NOTICE.—The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

Rev. 1. Atlanta, Birmingham and Coast Rd. Co., A14280. 11-21-26. 16.

No. C COMMON STOCK ——Shares

Atlanta, Birmingham and Coast Railroad Company, incorporated under the laws of the State of Georgia

This is to certify that ——— —— is the owner of —— fully paid and non-assessable shares without par value of the common stock of Atlanta, Birmingham and Coast Railroad Company (hereinafter called the "Company"), transferable on the books the company by the holder hereof in person, or by duly authorized attorney, upon surrender of this certificate properly endorsed. A statement of the respective preferences, restrictions, qualities, rights, and privileges

of the preferred stock and the common stock of the company, is printed upon the back hereof; and this certificate and the shares represented hereby are issued and shall be subject to all the provisions of the petition for incorporation of the company (a copy of which is on file at the office of the transfer agent), to all of which the holder by acceptance hereof assents.

In witness whereof Atlanta, Birmingham and Coast Railroad Company has caused this certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this ———.

Assistant Treasurer. *Vice President.*

Rev. 1. Atlanta, Birmingham and Coast Rd. Co., A14280. 11-21-26. 16.

Statement of the respective preferences, restrictions, qualities, rights, and privileges of the preferred stock and the common stock as contained in the petition for incorporation of Atlanta, Birmingham and Coast Railroad Company

The number of shares of the capital stock of the company which it is proposed to issue shall be fifty-two thousand (52,000) shares of preferred stock of the par value of one hundred dollars ($100) each and one hundred fifty thousand (150,000) shares of common stock without par value. The respective preferences, restrictions, qualities, rights and privileges of the prefered stock and the common stock shall be as follows:

(1) The holders of shares of the preferred stock shall be entitled to receive cumulative cash dividends at the rate of five per centum (5%) per annum and no more, payable semi-annually, in equal installments, on the first days of July and January in each year. Such dividends on the preferred stock shall be cumulative and accrue from January 1, 1928, (except that in the case of preferred stock issued after said date the dividends on such stock shall be cumulative and accrue only from the date on which such stock shall have been issued), so that if cash dividends at the rate of five per centum (5%) per annum for all past semi-annual dividend periods shall not have been paid on the outstanding preferred stock and the dividend at said rate for the then current semi-annual dividend period shall not have been paid or declared and funds set apart therefor, dividends at said rate for all past semi-annual dividend periods shall be fully paid and the dividend at said rate for the then current semi-annual dividend period shall be paid or declared and funds set apart, therefor, before any dividend shall be declared or paid upon or set apart for the common stock. Whenever dividends at the rate of five per centum (5%) per annum upon the outstanding preferred stock for all past semi-annual dividend periods shall have been paid in full and the dividend at said rate for the then current semi-annual dividend period shall have been paid or declared and funds set apart therefor, such dividends as may be determined by the board of directors may from time to time be declared and paid upon the common stock.

(2) The company at its option may redeem the whole of the preferred stock at the time outstanding, but not a part thereof, on any semi-annual dividend payment date after January 1, 1955, by paying the redemption price of one hundred and three dollars ($103) in cash for each share, together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date fixed for redemption, less the aggregate amount of all cash dividends theretofore paid thereon. At least three (3) months' previous notice of such redemption shall be given by the company to the holders of record of the preferred stock by mailing such notice, postage prepaid, to each holder of record of preferred stock at his address as it appears upon the books of the company for dividend payments, and by publishing such notice of redemption once a week for four (4) successive weeks in a daily newspaper of general circulation in the Borough of Manhattan, city of New York, and in a daily newspaper of general circulation in the city of Boston, Massachusetts, and, if the Commercial and Financial Chronicle, a financial magazine published weekly in the Borough of Manhattan, city of New York, be then published, in the Commercial and Financial Chronicle, the first publication in each case to be at least thirty (30) days prior to the date fixed for redemption in such notice. Notice having been duly given by mail and by publication as aforesaid, if on or before the redemption date named in such notice the funds necessary for such redemption shall have been set aside so as to be and continue to be available therefor, then from and after the redemption date fixed in such notice, the right to receive dividends on the preferred stock thereby called for redemption shall cease to accrue and all rights of the holders thereof as stockholders of the company shall cease and determine, except the right to receive the said redemption price, together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date fixed for the redemption, less the aggregate amount of all cash dividends theretofore paid thereon.

(3) Upon any liquidation, dissolution or winding up of the affairs of the company, whether voluntary or involuntary, except in case of redemption as aforesaid, before any distribution shall be made to the holders of the common stock the holders of the preferred stock shall be entitled to be paid in cash the par value of their preferred stock together with a sum equal to five per centum (5%) per annum upon the preferred stock from the date on which dividends on such preferred stock became cumulative to the date of such payment, less the aggregate amount of all cash dividends theretofore paid thereon. After such payment to the holders of the preferred stock, the remaining assets, if any, of the company may be divided and distributed among the holders of the common stock according to their respective shares.

(4) So long as any of said preferred stock shall be outstanding, the company shall not, without the consent of the holders of record of three-fourths of the then outstanding preferred stock given in writing or by affirmative vote at a meeting of the stockholders of the company or at a meeting of the holders of preferred stock duly called and held for the purpose in the manner provided in the by-laws of the company, (a) issue any preferred stock in addition to the said fifty-two thousand (52,000) shares, or (b) issue any preferred stock ranking on a parity with or having priority over the preferred stock; provided however, that no vote in respect of any of the matters specified in the foregoing clauses (a) and (b) shall be had or taken at any meeting of the stockholders or of the holders of preferred stock unless (i) the notice of such meeting shall state that it is proposed at the said meeting to vote upon one or more of the said matters, and shall specify which of said matters it is proposed to so vote upon, and (ii) such notice of such meeting shall have been mailed at least ten (10) days prior to the date fixed in such notice for such meeting and to each holder of record of preferred stock at his address as it then appears upon the stock transfer books of the company, and (iii) such other notice, if any, of such meeting shall have been given as may then be required by law or by the by-laws of the company. The preferences, restrictions, qualities, rights and privileges of the preferred stock shall not be amended or altered, so long as any of the preferred stock shall be outstanding.

(5) Subject to the provisions of paragraph (4) hereof, the holders of the common stock shall exclusively possess voting powers both for the election of directors and for all other purposes except as follows: If the company shall be in default in the payment of two semi-annual dividends on the preferred stock, then and in every such case, so long and only so long as any part of any semi-annual dividend on the preferred stock shall remain unpaid, the holders of the preferred stock shall have the exclusive voting powers both for the election of directors and for all other purposes. When, however, full semi-annual dividends on the preferred stock for all past dividend periods shall have been paid by the company, then and thereafter such voting powers of the holders of preferred stock shall cease and the exclusive voting powers of the holders of the common stock shall be restored, subject, however, to such voting powers of the holders of the preferred stock being revived from time to time in case of any subsequent default in the payment of two semi-annual dividends on the preferred stock.

Each holder of either class of stock which shall possess voting power upon any matter shall be entitled to one vote on such matter for each share of such class of stock registered in his name on the books of the company.

For value received ——hereby sell, assign and transfer unto———
——— —— shares of the capital stock represented by the within

certificate and do hereby irrevocably constitute and appoint ——— ——— attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated——— 19—.

In the presence of —

——— ———.

——— ———.

NOTICE.—The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

173 Before the Interstate Commerce Commission

IN THE MATTER OF THE APPLICATION ON BEHALF OF ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY for a certificate of public convenience and necessity, pursuant to subdivision (18) of section 1, and for authority to issue stocks pursuant to subdivision (2) of section 20a, of the interstate commerce act and other applicable provisions thereof

Finance Docket No. 5454

Return to questionnaire

Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins, as the reorganization committee (hereinafter called the Reorganization Committee), constituted by the plan and agreement of reorganization (hereinafter called the Plan), dated February 23, 1926, of Atlanta, Birmingham & Atlantic Railway Company (hereinafter called the Old Company), having made application on behalf of Atlanta, Birmingham and Coast Railroad Company (hereinafter called the Applicant), to the Interstate Commerce Commission:

(a) Under paragraph (18) of section 1 of interstate commerce act for a certificate that the present or future public convenience and necessity require or will require that the applicant acquire and operate the lines of railroad and other properties of the Old Company and of its receiver and engage in transportation over and by means of the same;

(b) Under paragraph (2) of section 20a of the interstate commerce act for the authorization of the issue by the applicant of $5,180,344.07 par value of its preferred stock and 150,000 shares without par value of its common stock, in accordance with the provision of the plan; and

(c) For any other action required to facilitate the consummation of the plan,

which application is filed in the office of the commission in Finance Docket No. 5454, hereby affirm that notice of the application has

been published in the form prescribed by the commission at least once during each of three consecutive weeks in the following newspapers:

The Atlanta Constitution, beginning April 21, 1926;
The Birmingham News, " April 21, 1926;
The Brunswick News, " April 21, 1926;

that said newspapers are of general circulation in each of the following counties of the States named:

State of Georgia—

County
Glynn,
Brantley,
Pierce,
Bacon,
Wilcox,
Coffee,
Irwin,
Ben Hill,
Turner,
Crisp,
Dooly,
Macon,

State of Alabama—

Chambers,
Randolph,
Clay,

State of Alabama—Continued.

County
Taylor,
Talbot,
Meriwether,
Coweta,
Fayette,
Campbell,
Fulton,
Ware,
Tift,
Colquitt,
Thomas,
Troup;
Talladega,
Shelby,
Jefferson,

which are all of the States and counties in which the lines of railroad, which it is proposed the applicant acquire and operate, are situated; and that the newspaper clippings hereto attached contain true copies of the notice as published in said newspapers. The applicant also submits the following information required by the commission:

1. The essential facts relied upon to support the statement that the applicant is a carrier by railroad, engaged in the transportation of passengers or property, subject to the interstate commerce act, or is a corporation organized to construct and operate a railroad.

The applicant is to be organized under the laws of the State of Georgia or of such other State as the reorganization committee may, with the approval of the commission, determine for the purpose, among other things, of acquiring and operating the lines of railroad and other properties of the Old Company and its receiver, pursuant to the plan. A sale of said lines of railroad and other properties is to be held as soon as practicable pursuant to the decree of foreclosure and sale made under date of April 30, 1926, by the United States District Court for the Northern District of Georgia, Northern Division, and ancillary decrees made in the ancillary districts. At such sale the reorganization committee will cause a bid to be made. In case such bid is acccepted and said lines of railroad and other prop-

erties sold pursuant thereto, the purchasers will incorporate under sections 2585 and 2586 of the Georgia Code, or other law, as aforesaid, and the corporation thus formed will be the New Company under the plan and the applicant herein. The applicant is to take any action necessary to obtain the right to engage in transportation by railroad in the States of Georgia and Alabama, which are the States in which it is proposed that the applicant operate said lines of railroad.

2. Whether the proposed new line of railroad will be both constructed and operated by the applicant.

The said lines of railroad are already constructed and are being operated by said receiver. They are to be acquired by the applicant as an entirety and are to be operated by the applicant.

3. Whether or not any corporation, individual, or trustee, holds control over the applicant at the date of filing this return. If control is so held:

(a) The form of control, whether sole or joint, and whether in trust.

(b) The name and business address of the controlling corporation, individual, or trustee.

(c) The manner in which control was established.

(d) The extent of control.

(e) Whether control is direct or indirect.

(f) The name and business address of the intermediary through which control, if indirect, was established and is exercised.

(g) The name and business address of the beneficiaries, for whom the trust, if any, is maintained.

(h) The purposes of the trust.

The reorganization committee, or its nominee, will hold control over the applicant until the consummation of the plan, at which time control will be transferred to Atlantic Coast Line Railroad Company. Control will be in the form of the entire outstanding common stock.

4. Whether the applicant is connected by common stock ownership, or otherwise, with any industry to be served by the proposed line. If so, state the facts.

The Old Company now owns and the applicant will acquire $5,000 par value of the capital stock of the Atlantic Compress Company, Atlanta, Georgia, out of a total issue of $282,700 par value.

5. Amount and kind of capital stock (a) authorized, and (b) issued, for construction of the proposed line.

Said lines of railroad are already constructed, and no capital stock is to be issued for construction. The proposed capitalization of the applicant is as follows:

PREFERRED STOCK.—Authorized $5,200,000 par value, of which $5,180,344.07 par value will be issued in accordance with the provisions of the plan.

The preferred stock is to be preferred as to cumulative dividends at the rate of 5% per annum (accruing from one year after title to

the properties to be acquired by the applicant shall vest in the applicant), and as to assets at 100 and accrued dividends; to be redeemable after January 1, 1935, as a whole but not in part at 103 and accrued dividends; and to have no power to vote except in case of continuing default in the payment of two semi-annual dividends, in which case the preferred stock is to have exclusive voting power so long as any default shall continue. Dividends at the rate aforesaid and the redemption of the preferred stock upon the liquidation, merger, or consolidation of the applicant or any transfer of all or a substantial part of the property of the applicant, are to be guaranteed by the Coast Line. The preferred stock and common stock are more particularly described in the plan.

COMMON STOCK.—Authorized 150,000 shares without par value, all of which will be issued in accordance with the provisions of the plan.

6. The chief purposes and functions of the proposed line.

The chief purposes and functions of the acquisition by the applicant of said lines of railroad will be to continue transportation service to a considerable part of the States of Georgia and Alabama. The freight and passenger business of the railroad may be described as follows:

FREIGHT TRAFFIC.—The principal long haul business of said lines of railroad is:

1. Traffic received from connections at Atlanta and Birmingham consisting of coal and foodstuffs, manufactured articles and package freight of all kinds destined to points on said lines of railroad or through various connections to points in south Georgia.

2. Similar traffic received at Atlanta and Birmingham for points in Florida and Cuba delivered to the Atlantic Coast Line Railroad at Offerman or to the Seaboard Air Line Railway at Thalmann.

3. Fruits and vegetables, and phosphate rock, from points in Florida received from the Atlantic Coast Line Railroad at Offerman or the Seaboard Air Line Railway at Thalmann, destined to points on said lines of railroad or points north thereof via Atlanta or via Birmingham.

The principal interchange in both directions at Atlanta is with the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad, and at Birmingham is divided between the Louisville & Nashville Railroad, St. Louis-San Francisco Railway, Illinois Central Railroad, and Mobile & Ohio Railroad. Eastern business through Atlanta is divided between the Seaboard Air Line Railway and the Southern Railway.

PASSENGER TRAFFIC.—While there is some interchange with connecting lines at Atlanta, Birmingham and other junction points, there is no service except purely local service confined to said lines of railroad.

7. The classes of service to be performed, as passenger, freight express, and switching.

All of said four classes of service are performed by said lines of railroad.

8. The kind of motive power to be used. If electric power, state source and estimated cost.

The kind of motive power used on said lines of railroad is steam.

9. Whether the proposed line will receive material revenue from the territory traversed, or serve any material public convenience and necessity of the local territory. If the answer is "no," the applicant may elect to omit answers to questions 10 to 21, inclusive.

Said lines of railroad receive material revenue from the territory traversed and serve material public convenience and necessity of the local territory.

10. The name and population of each county in which the proposed new line of railroad will be situated, and the name and population of each city, town, and village at which a station will be established, together with its distance from a designated initial point, with the source of information as to population.

The information requested is contained in Schedule I hereto attached and made a part hereof.

11. The names of places mentioned in paragraph 10 that are now served by common carriers (excluding street railways), and the name of each common carrier serving the several places.

The information requested is contained in Schedule II hereto attached and made a part hereof.

12. The names of the places mentioned in paragraph 10 that have no common carrier service, giving the distance in miles of each such place from the nearest station on a common carrier, together with the name of each such carrier, and the character of the connecting highway.

This question is not deemed to be applicable to the present application.

13. The name and population of each city, town, and village (together with State and county in which located), having a population of 200 or more and lying within 10 miles of the proposed new line of railroad, but not entered thereby.

This question is not deemed to be applicable to the present application.

14. The approximate distance in miles by highway from the nearest station on the proposed new line of railroad to each of the places enumerated in paragraph 13, and the names of all common carriers, if any, now serving each.

This question is not deemed to be applicable to the present application.

15. The names of other common carriers with which the proposed new line of railroad will connect, and the proposed points of track connection.

The information requested is contained in Schedule III hereto attached and made a part hereof.

16. The general topography of the country through which the proposed new line of railroad will extend, indicating whether level, rolling, mountainous, cultivated, pasture, prairie, desert, rocky, timbered, or underlaid with minerals.

TOPOGRAPHY.—The east end of said lines of railroad, valuation sections 1 to 3, is on a flat coastal plain. The streams have low gradients and sluggish currents. Valuation sections 4 and 5 are in a gently rolling country, with watercourses well defined. Valuation sections 6 to 10 are along the foothills of the Blue Ridge Mountains. The country is quite broken, with stream ravines, frequently of considerable depth. Valuation sections 11 and 12 pass over the Blue Ridge and other ranges of the Appalachian system. Here the country is rugged, and, the line being located generally across the drainage, the grading is very heavy.

GEOLOGY.—The geological formations vary from sand and sandy clays of the coastal plain on the east to stiff clays, limestone, gneiss, and granite on the middle and western sections. There is practically no classified material east of Montezuma, but heavy classification west of that point. Bituminous coal is found in the vicinity of the carrier's line in the Birmingham district.

CLIMATE.—The climate is mild on the coastal plain. It seldom reaches the freezing point or passes over 100° F. At Birmingham and Atlanta, the western and northern termini, it gets somewhat colder, ordinarily not ranging below 20° or above 96° F. The annual rainfall varies from 45 to 55 inches.

17. The approximate area of the territory to be served, an estimate of the population therein, and of the area,

(1) In timber,

(2) In pasture, and

(3) Under cultivation.

The area of the counties traversed by said lines of railroad is 13,789 square miles, and the population of these counties as shown by the 1920 census is 1,110,391. In the territory served by the said lines of railroad, it is estimated that 43% of the land is in timber and 57% in pasture and under cultivation.

18. The kind of industry carried on in the area to be served, such for example, as farming, dairying, grazing, coal mining, manufacturing, lumbering, etc., and the relative importance of each.

DEVELOPMENT—FARM.—Said lines of railroad are located generally through farming country. A part of the territory traversed in the mountain section is unsuitable for farming purposes. Generally speaking, however, the territory served is undergoing considerable agricultural development, and the soil is well suited for production of cotton, corn, early vegetables, fruits, tobacco, and general field crops.

DEVELOPMENT—INDUSTRIAL.—Birmingham, the western terminus, is a city of 178,000 population and is the center of the chief iron and coal district of the South. Not only does it produce large quantities

of coal and iron ores from its mines, but located there are many extensive steel and iron manufacturing plants. It is a rapidly growing city, with enormous natural resources.

Atlanta, the northern terminus, is a city of about 200,000 population and is the largest supply point for general production in the southeast. Its manufacturing plants cover a wide field and its jobbing business is large. It is one of the leading railroad centers of the country. There are a number of small thriving cities located on said lines of railroad, such as Waycross, Thomasville, Tifton, Fitzgerald, Moultrie, Cordele, La Grange, and Montezuma in Georgia, and Talladega and Roanoke, in Alabama, at each of which are located plants of importance.

Brunswick, the seaport terminal, is a growing city. Large naval-stores plants are located there, and it is a market for cross-ties and other lumber products for export. Brunswick is located favorably to the trade lanes of coastwise ocean traffic, and while it has not yet been developed as a prominent export point there appears to be no reason why it should not increase in importance.

19. The main facts as to the age, growth, and extent of such industries, their probable future growth and permanence and the reasons therefor.

The information requested is contained in Schedule IV hereto attached and made a part hereof.

20. What carriers now serve these industries, and to what extent.

The majority of the industries shown on Schedule IV above mentioned are served only by said lines of railroad. In some cases other lines of railroad have tracks into these industries. In addition to the industries shown on said Schedule IV there are many more large plants located on the tracks of other lines of railroad at points in Georgia and Alabama reached by said lines of railroad of the Old Company, to and from which plants service is performed under reciprocal switching arrangements.

21. Whether the chief support of the proposed new line of railroad will come from the general community or from some particular industry or industries, located or to be located. In the latter case give facts concerning such particular industry or industries and applicant's contractual or financial relation thereto.

(See answer to No. 6.)

22. Whether the proposed new line of railroad will be built primarily for a direct profit from railway operation or for the advantage of any other industry or business. If for the latter, state what industry or business will be so benefited, what such advantages will be, and the applicant's contractual or financial relation to such industry or business.

Said lines of railroad are operated primarily for direct profit from railway operation.

23. If the proposed new line of railroad is an extension of an existing railroad, branch, connecting tract or cut-off, in so far as

not fully set forth under paragraphs 21 and 22, the extent to which it is expected to be directly profitable in itself, and the extent to which it is expected to be justified by its effect on the business of the existing line.

The operation of said lines of railroad after the consummation of the plan is expected to be directly profitable in itself and also in connection with and as a part of the Atlantic Coast Line system.

24. If the proposed new line of railroad is to be a connecting link between existing railroads, the kind and volume of traffic, expressed in tons or carloads, that probably will be interchanged.

This question is not deemed to be entirely applicable to the present application. A schedule of interchange with principal connections for the five-year period ending December 31, 1925, is attached hereto marked "Schedule V" and made a part hereof.

25. What economies will be effected by such interchange of traffic.

The reorganization committee does not know of any economies that could be made immediately effective.

26. Of the interchange traffic mentioned in answer to paragraph 24, what part, expressed in tons or carloads, can not be hauled or moved between common points by existing railroads.

This question is not deemed to be entirely applicable to the present situation. About three-fourths of the revenue of said lines of railroad is derived from through traffic, so that probably 75% of the interchange shown on Schedule V above-mentioned could have moved by other lines of railroad.

27. The facts as to any agreement, tentative or otherwise, with existing carriers, covering operation of the proposed line, interchange of traffic, division of rates, or trackage rights.

There are no agreements, tentative or otherwise, covering the operation of the proposed line or the interchange of traffic. Divisions of rates are regularly published. The Old Company has the following trackage rights relating to passenger trains only:

At Birmingham, Alabama, one-half mile of the Louisville & Nashville Railroad is used between the junction with that line and the union station;

At Atlanta, Georgia, 1.72 miles of the Southern Railway is used between the junction with that line and the terminal station; and

At Waycross, Georgia, .06 of a mile of the Atlantic Coast Line Railroad Company is used between the junction with that line and the union station.

28. Whether any aid, gift, grant of right of way, or other donation has been promised in connection with the proposed new line of railroad, and if so, the names of all persons, natural or artificial, giving such aid, gift, grant of right of way, or other donation, with a statement of the nature and value thereof.

This question is not deemed to be applicable to the present application.

29. The manner in which it is proposed to finance construction and equipment, the kind and amount of securities to be issued, and the approximate terms of their sale; to what extent funds for financing are now available, and which, if any, of such securities will be underwritten by industries to be served by the proposed line.

This question is not deemed to be entirely applicable to the present application. The purchase price bid for said lines of railroad and other properties at the foreclosure sale will be paid in bonds, so far as permitted by the decree of foreclosure and sale, to the extent that bonds are deposited under the plan. The distributive share in the proceeds of such sale of bonds not so deposited will be paid in cash provided by Atlantic Coast Line Railroad Company.

All claims having priority over the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company formerly held by the United States Government (if it is necessary to pay off the same), obligations of said receiver and receivership and reorganization expenses are to be paid in cash to be provided by the Coast Line upon the acquisition of said lines of railroad and other properties by the applicant, except that obligations not matured at the time of the acquisition may be assumed by the applicant instead of being paid in cash.

30. An estimate, in detail, of the character and volume of traffic expected and the gross revenue to be derived therefrom, covering each of the first five years following the completion of the proposed new line of railroad, together with an estimate of the annual revenues expected after the first five years. The detailed estimate required for the first five years should show the amount of each class or traffic, the mean length of haul, the rate per unit, and the revenue to be derived. Chief points or territories of origin and chief points or territories of destination of traffic.

This question is not deemed to be entirely applicable to the present application. The following schedules are attached hereto and made a part hereof:

Schedule VI: Statement of predominating classes of revenue freight moved during five-year period ended December 31, 1925;

Schedule VII: Summary of freight traffic for the five years ended December 31, 1925; and

Schedule VIII: Summary of passenger traffic for the five years ended December 31, 1925.

31. The estimated total gross revenue, operating expenses, net revenue and net railway operating income, corresponding with the estimates of traffic under paragraph 30. By "net railway operating income" is meant the excess of the credits over the debits to income, as reflected by the operating revenue, operating expense, railway tax accrual, uncollectible railway revenue, equipment rent, and joint facilities rent accounts.

This question is not deemed entirely applicable to the present application. There is attached hereto, marked "Schedule IX" and

made a part hereof, a stateemnt showing the railway operating revenues, railway operating expenses, net revenue from railway operations and net railway operating income of the Old Company and/or the receiver for the five years ended December 31, 1925.

32. The part of the estimated traffic which will constitute net additional business developed or created by the construction of the proposed new line of railroad, and the part that will be diverted from existing railroads.

This question is not deemed to be applicable to the present application.

33. The particular mining, timbering, manufacturing, or other enterprises to be established contingent on the construction of the proposed new line of railroad and applicant's contractual or financial relation thereto. The tonnage or number of cars of freight expected from such enterprise.

This question is not deemed to be applicable to the present application.

34. The dates on which it is expected to begin and to complete the construction of the proposed new line of railroad.

This question is not deemed to be applicable to the present application.

35. The engineering work in full detail which has been done with respect to the proposed line at the time of filing the return.

This question is not deemed to be applicable to the present application.

36. The following particulars as to the physical characteristics of the proposed new line of railroad:

(a) The number of mail line tracks.

(b) Weight of rail for main line track.

(c) Rate of maximum grade in each direction, and whether and how compensated for curvature.

(d) Rate of limiting grade that will fix train loading in each direction, and whether and how compensated for curvature.

(e) If helper grades are to be used, the number, rate, length and location of each.

(f) The maximum rate of curve.

(g) The average amount of curvature per mile in degrees.

(h) The approximate length and height of wooden trestles or other temporary construction. (Details under this paragraph not fixed by survey are to be estimated from reconnaissances so far as possible.)

The following information relates to the lines of railroad to be acquired by the applicant:

(a) One. (b) 80# rail is used on main line track, i. e., between Brunswick and Birmingham and between Atlanta and Manchester, with the exception of 42¾ miles scattered between Brunswick and Mile Post 107. 60# rail is used for this 42¾ miles. The Waycross and Thomasville lines are laid with 56# and 60# rail. (c) Maximum grades in each direction are one per cent. South of Fitzgerald

the grades are not compensated for curvature. (b) One per cent is limiting grade that will fix train loading in each direction, and is not compensated for curvature south of Fitzgerald. North of Fitzgerald grade is compensated for curvature, .04 grade being allowed per degree of curvature. (e) No helpers used. (f) Six degrees. (g) 37 degrees, 39 minutes, 6 seconds. (h) The average length of wooden trestles is 112.6 feet, and the average height 8.42 feet.

37. An estimate of total increase in charges to road and equipment account during the first five (5) years after completion of the line. If this displaces rental charges on equipment, so show.

This question is not deemed to be applicable to the present application.

38. Any additional facts or reasons to show that the public convenience and necessity require the construction of the proposed line.

Said lines of railroad have been serving the public for many years. The total main track mileage is approximately 637.06 miles (a detailed statement being attached hereto marked "Schedule X" and made a part hereof). The main line is of modern construction, built to handle heavy tonnage economically, with low grades and curvatures. The existence of the railroad as an independent company has not been successful and its future as an independent company is problematical. There seems to be no possibility of putting through a reorganization of the railroad as an independent company. The offer made by Atlantic Coast Line Railroad Company, on which the plan was based, was the result of long negotiation between the committees and the Coast Line. It is believed that this offer is the best offer obtainable. No other plan of reorganization has been brought forward and unless this plan is approved said lines of railroad will remain in the hands of the court indefinitely.

Reference is made to the tentative plan of consolidation of railroads adopted by the commission, wherein the said lines of railroad and other properties are assigned to the Atlantic Coast Line-Louisville & Nashville system, and to the report to the commission by William Z. Ripley, wherein it is said among other things:

"In the meantime, while these events were transpiring, the Louisville & Nashville-Atlantic Coast Line merger having occurred in 1902, the combined system was left with a considerable gap, as shown by map 11, across middle Georgia. There was no north and south line between Montgomery on the west and Savannah on the east; and this great system remains to-day dependent upon interchange with connecting lines for the maintenance of direct through service between Jacksonville, Atlanta, and Cincinnati. The detour to the west by Montgomery is all right for St. Louis and Chicago, but not for movement by a short line from Jacksonville to Atlanta. It is the location of the Atlanta, Birmingham & Atlantic as a direct line and bridge for the Louisville & Nashville-Atlantic Coast Line

system across this gap, which constitutes the principal source of its value, viewed in a large way. The Federal Railroad Administration recognized this fact. All of the fruits and vegetables from nine roads in Florida, destined for western points through the Atlanta gateway, were routed via Waycross over this line. The Louisville & Nashville has at times routed its 'Dixie' and 'Southland' flyers over this line, shortening the haul by about 42 miles as against other possible routes. All the evidence points to a natural relationship between the Atlanta, Birmingham & Atlantic and this great system." (63 I. C. C. 543.)

Exhibits A to F described in the questionnaire as follows:

"A. A copy of the engineering report of reconnaissance if records of location surveys are not submitted.

"B. A copy of the specifications as to construction, if any exist.

"C. A map of the actual staked or projected location, if such location has been made, showing the alignment in detail, together with the usual topographic features, including roads, streams, canals, railroads, cities, towns, villages, State and other governmental boundary lines. A small scale is preferable but not required. Small maps may be folded accordeon fashion to conform to the size of the return. If more than 12 feet long it should be submitted in a continuous roll.

"D. A copy of the most complete and authoritative available profile of the location of the proposed new line of railroad. If more than 12 feet long, submit in a continuous roll, otherwise fold to the size of the return.

"E. (1) A detailed estimate of the cost of building the proposed new line of railroad, with all the necessary appurtenances (except equipment), classified by Interstate Commerce Commission primary accounts; also a concise detail of estimated quantities and prices covering what is set down under accounts 3 to 12, inclusive. Details may be required for other principal accounts. A complete estimate showing quantities and prices in reasonable detail may be submitted in any form.

(2) Detailed estimates of the kind and cost (or rental cost) of the equipment required to handle the estimated traffic separately for the first and fifth years of complete operation. State whether the equipment is to be bought or rented; show second-hand equipment as such; give number of units, class of service, and general type, with the weight and tractive power of locomotives and capacity of freight cars.

"F. If the applicant is a going concern, copies of the income account for the five preceding calendar years and for the months of the current year for which the figures are available; also copies of the latest profit and loss account and general balance sheet,"

are not deemed to be applicable to the present application and are not filed herewith.

Exhibit G, described in the questionnaire as follows:

"G. Opinion of counsel that the proposed construction is within the charter powers of the applicant,"

will be filed promptly upon the incorporation of the applicant as aforesaid.

Oath

STATE OF NEW YORK,

County of New York, ss:

George E. Warren makes oath and says that he is a member of the reorganization committee aforesaid, which made the above-entitled application on behalf of Atlanta, Birmingham and Coast Railroad Company; that he has been authorized by proper action on the part of said reorganization committee to verify and file with the Interstate Commerce Commission the foregoing return to questionnaire of said commission in respect of the application in Finance Docket No. 5454; that he has carefully examined all of the statements referred to in said return, and the schedules attached thereto and made a part hereof; that he has knowledge of the matters set forth in such return and all such statements made and the matters set forth therein are true and correct to the best of his knowledge, information, and belief.

GEORGE E. WARREN.

Subscribed and sworn to before me, a notary public in and for the State and county above named this 12th day of May, 1926.

(Notarial seal.) C. A. KENNEY,
Notary Public.

173A Newspaper clippings

NOTICE

Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins, as the reorganization committee of the Atlanta, Birmingham & Atlantic Railway Company, hereby give notice that on April 9, 1926, they filed with the Interstate Commerce Commission at Washington, D. C., their joint application on behalf of the Atlanta, Birmingham & Coast Railroad Company, a corporation, to be organized for a certificate that the present and future public convenience and necessity require the acquisition and operation by said Atlanta, Birmingham & Coast Railroad Company of the railroad owned by the Atlanta, Birmingham & Atlantic Railway Company and now operated by the receiver of that company, extending from Brunswick, Georgia, in a general northwesterly direction to Readers Gap, Alabama, approximately 444 miles, with branch lines in the State of Georgia extending from Manchester to Atlanta, about 75 miles; from Fitzgerald to Thomasville, 80.37 miles; from Sessoms

to Waycross, 25 miles; and from Ocilla to Irwinville, 9.74 miles; a total of 623.81 miles of main track.

FRANCIS R. HART,
GEORGE E. WARREN,
GEORGE E. ROOSEVELT,
JAMES H. PERKINS,
Reorganization Committee of the Atlanta, Birmingham & Atlantic Railway Co.

"The Birmingham News."

NOTE.—Clippings of the notice from "The Atlanta Constitution" and "The Brunswick News" are attached to the original and two copies of this return to questionnaire. Additional clippings from such newspapers are not available. The notices published in all three newspapers were identical.

Schedule I

1. NAMES AND POPULATION OF COUNTIES TRAVERSED BY THE A., B. & A. RAILWAY

GEORGIA

County	Population	County	Population
Glynn	19,370	Crisp	18,914
Brantley	6,670	Dooly	20,522
Pierce	11,934	Macon	17,677
Bacon	6,460	Taylor	11,473
Ware	28,361	Talbot	11,153
Coffee	18,653	Meriwether	26,168
Irwin	12,670	Troup	36,097
Ben Hill	14,599	Coweta	29,047
Tift	14,493	Fayette	11,396
Colquitt	20,332	Campbell	11,709
Thomas	33,044	Fulton	232,606
Turner	12,466		
Wilcox	15,511		641,325

NOTE.—Population figures secured from 1920 census.

ALABAMA

County	Population	County	Population
Chambers	41,201	Shelby	27,097
Randolph	27,064	Jefferson	310,054
Clay	22,645		
Talladega	41,005		469,066

NOTE.—Population figures secured from 1920 census.

2. NAMES AND POPULATION OF AGENCY STATIONS ON A., B. & A. RAILWAY AND DISTANCE FROM BRUNSWICK

GEORGIA

Name of station	County	Population	Distance from Brunswick
Main line:			
Brunswick	Glynn	16,809	
Thalmann	Glynn	110	21 miles.
Hortense	Brantley	25	38 "
Zirkle	Pierce	310	44 "
Offerman	Pierce	493	49 "
Bristol	Pierce	1,156	56 "
Mershon	Pierce	30	58 "
Coffee	Bacon	800	63 "
Rockingham	Bacon	951	70 "
Alma	Bacon	1,061	73 "

GEORGIA—continued

Name of station	County	Population	Distance from Brunswick
Waycross line:			
Beach	Ware	701	88 miles
Waycross	Ware	20,098	107 "
Main line:			
Nicholls	Coffee	936	84 "
Chatterton	Coffee	55	90 "
Douglas	Coffee	3,801	97 "
Ambrose	Coffee	108	100 "
Wray	Irwin	250	112 "
Osierfield	Irwin	1,083	117 "
Fitzgerald	Ben Hill	9,868	126 "
Thomasville line:			
Mystic	Irwin	886	135 "
Tifton	Tift	3,005	152 "
Omega	Tift	1,224	161 "
Crosland	Colquitt	532	165 "
Norman Park	Colquitt	1,462	169 "
Moultrie	Colquitt	7,449	178 "
Murphy	Colquitt	585	187 "
Coolidge	Thomas	1,711	192 "
Merrillville	Thomas	1,204	196 "
Thomasville	Thomas	13,079	207 "
Main line:			
Rebecca	Turner	1,751	142 "
Double Run	Wilcox	398	147 "
Hatley	Crisp	900	152 "
Cordele	Crisp	9,426	163 "
Vienna	Dooly	4,611	173 "
Lilly	Dooly	258	179 "
Byromville	Dooly	2,635	183 "
Dooling	Dooly	1,438	186 "
Montezuma	Macon	5,630	194 "
Oglethorpe	Macon	2,605	196 "
Ideal	Macon	2,004	206 "
Rupert	Taylor	177	213 "
Charing	Taylor	225	218 "
Mauk	Taylor	56	222 "
Junction City	Talbot	323	230 "
Talbotton	Talbot	1,923	238 "
Woodland	Talbot	356	248 "
Manchester	Meriwether	2,776	256 "
Atlanta line:			
Woodbury	Meriwether	2,477	266 "
Gay	Meriwether	290	275 "
Alvaton	Meriwether	1,474	281 "
Haralson	Coweta	862	285 "
Senoia	Coweta	906	290 "
Aberdeen	Fayette	110	299 "
Tyrone	Fayette	1,468	303 "
Union City	Campbell	620	312 "
Atlanta	Fulton	200,616	334 "
Main line:			
Warm Springs	Meriwether	1,413	261 "
Durand	Meriwether	965	268 "
Stovall	Meriwether		273 "
LaGrange	Troup	23,523	287 "

ALABAMA

Main line:			
Standing Rock	Chambers	2,293	302 miles
Roanoke	Randolph	6,730	311 "
Abanda	Chambers	110	321 "
Wadley	Randolph	508	325 "
Cragford	Clay	161	341 "
Lineville	Clay	1,507	350 "
Pyriton	Clay	219	356 "
Erin	Clay	312	360 "
Talladega	Talladega	6,546	378 "
Arkwright	Shelby	36	398 "
Chelsea	Shelby	1,212	413 "
Pelham	Shelby	111	428 "
Bessemer	Jefferson	21,975	442 "
Birmingham	Jefferson	178,806	453 "

NOTE.—Population figures secured from 1920 census.

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Schedule II

Birmingham, Alabama	Alabama Great Southern Railroad; Central of Georgia Railway; Louisville & Nashville Railroad; Seaboard Air Line Railway; Southern Railway.
Bessemer, Alabama	Alabama Great Southern Railroad; Louisville & Nashville Railroad; Seaboard Air Line Railway; Southern Railway.
Helena, Alabama	Louisville & Nashville Railroad.
Pelham, Alabama	Louisville & Nashville Railroad.
Arkwright, Alabama	Central of Georgia Railway.
Talladega, Alabama	Louisville & Nashville Railroad; Southern Raileay.
Pyriton, Alabama	Ashland, Railway.
Roanoke, Alabama	Central of Georgia Railway.
Standing Rock, Alabama	Chattahoochee Valley Railway.
LaGrange, Georgia	Atlanta & West Point Railroad.
Durand, Georgia	Central of Georgia Railway.
Warm Springs, Georgia	Southern Railway.
Atlanta, Georgia	Atlanta & West Point Railroad; Central of Georgia Railway; Georgia Railroad; Louisville & Nashville Railroad; Nashville, Chattanooga & St. Louis Ry.; Seaboard Air Line Railway; Southern Railway.

Schedule III

Alabama Great Southern Railway	Bessemer, Alabama; Birmingham, Alabama.
Ashland Railway	Pyriton, Alabama.
Atlanta & West Point Railroad	Atlanta, Georgia; LaGrange, Georgia; Union City, Georgia.
Atlantic Coast Line Railroad	Brunswick, Georgia; Offerman, Georgia; Hortense, Georgia; Thomasville, Georgia; Tifton, Georgia; Waycross, Georgia.
Birmingham Southern Railroad	Bessemer, Alabama; Birmingham, Alabama.
Central of Georgia Railway	Arkwright, Alabama; Atlanta, Georgia; Birmingham, Alabama; Durand, Georgia; Junction City, Georgia; Montezuma, Georgia; Oglethorpe, Georgia; Roanoke, Alabama; Senoia, Georgia.
Chattahoochee Valley Railway	Standing Rock, Alabama.
Georgia Railroad	Atlanta, Georgia.
Georgia & Florida Railway	Douglas, Georgia; Moultrie, Georgia.
Georgia Northern Railroad	Moultrie, Georgia.
Georgia, Southern & Florida Railway	Cordele, Georgia; Tifton, Georgia; Vienna, Georgia.
Georgia Southwestern & Gulf Railroad	Cordele, Georgia.
Illinois Central Railroad	Bessemer, Alabama; Birmingham, Alabama.
Louisville & Nashville Railroad	Atlanta, Georgia; Bessemer, Alabama; Birmingham, Alabama; Helena, Alabama; Pelham, Alabama; Talladega, Alabama.
Mobile & Ohio Railroad	Birmingham, Alabama.
Nashville, Chattanooga & St. Louis Railway.	Atlanta, Georgia.
St. Louis-San Francisco Railroad	Bessemer, Alabama; Birmingham, Alabama.

Seaboard Air Line Railway	Atlanta, Georgia; Bessemer, Alabama; Birmingham, Alabama; Cordele, Georgia; Fitzgerald, Georgia; Thalmann, Georgia.
Southern Railway	Atlanta, Georgia; Bessemer, Alabama; Birmingham, Alabama; Brunswick, Georgia; Talladega, Alabama; Warm Springs, Georgia; Woodbury, Georgia.
Talbotton Railroad	Talbotton, Georgia.

173C *Schedule IV.—Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, Receiver.—List of industries located on the line of the Atlanta, Birmingham & Atlantic Railway, April 15, 1926*

H. S. Young, assistant general freight agent, 417 Brown Building, Atlanta, Ga.; C. B. Kealhofer, freight traffic manager, 415 Brown Building, Atlanta, Ga.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver

Industry or firm	Character of business	Annual tonnage or approximate capacity
Alma, Ga.:		
Farmers Gin Company	Ginnery	1,000 bales.
Jones Ice Company	Ice house	50 cars annually.
Co-Operative Stock Pens	Livestock	50 cars annually.
H. W. Andrews	Mules and horses	10 cars annually.
J. E. Dyal	Naval stores	150 cars annually.
Standard Oil Company	Petroleum products	25 cars annually.
Pan American Petroleum Corporation	Petroleum products	20 cars annually.
Georgia Planing Mill Company	Planing mill	300 cars annually.
Ricks Lumber Company	Planing mill	10,000 feet annually.
Mill City Stave Mill Company	Stave mill	75 cars annually.
Tobacco Warehouse Company (Brame & Harris, managers).	Tobacco sales warehouse	Unlimited.
J. L. Young Company	Wholesale groceries	50 cars annually.
Alma Grocery Company	Wholesale groceries	25 cars annually.
Ambrose, Ga.:		
Holland Manufacturing Company	Cotton warehouse	2,000 bales.
Paulk Gin Company	Ginnery	1,500 bales.
Holland Manufacturing Company	Ginnery	2,000 bales.
Harvey & Dickerson	Livestock	10 cars annually.
Harvey Brothers	Naval stores	50 cars annually.
S. B. Butler	Planing mill, shingles	6,000 feet daily.
Seaboard Farms	Packing house	600 cars annually.
Aspinwall, Ga.:		
Thomas Brothers	Naval stores	50 cars annually.
Atlanta, Ga.:		
Union Carbide Company	Carbide	12 cars annually.
Eclipse Coal Company	Coal	170 cars annually.
R. O. Campbell Coal Company	Coal, building material	180 cars annually.
City Coal & Grading Company	Coal, sand	85 cars annually.
Griffin Construction Company	Contractors	8 cars annually.
Knott Carmichal Furniture Company	Furniture manufacturers	50 cars annually.
Frank G. Lake	Lumber, building material	250 cars annually
Addison-Rudisal Company	Lumber, shingles	100 cars annually.
Godfrey Marble & Tile Company	Marble and tile plant	20 cars annually.
Capital City Casket Company	Mfgrs. of caskets	100 tons annually.
World Manufacturing Company	Mfgrs. of disinfectants	100 tons annually.
Atlantic Chemical Company	Mfgrs. of fertilizer	8,000 tons annually.
Davidson Kennedy Company	Mfgrs. of oil-mill mchry	50 cars annually.
J. W. Killingsworth	Mfgrs. of car springs	
Reed Oil Company	Petroleum products	324 cars annually.
Sinclair Refining Company	Petroleum products	300 cars annually.
Holcomb Petroleum Company	Petroleum products	125 cars annually.
Pan American Petroleum Corporation	Petroleum products	400 cars annually.
White Eagle Oil Company	Petroleum products	125 cars annually.
L. E. Holloway Company	Produce fruit	300 cars annually.
W. H. Cunningham	Produce fruit	175 cars annually.
Edwards Brothers	Produce fruit	50 cars annually.
R. D. Grove & Company	Produce fruit	250 cars annually.
O. H. Wright	Produce fruit	25 cars annually.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Atlanta, Ga.—Continued.		
Walker Roofing Company	Roofing	30 cars annually.
O. A. Smith Company	Roofing brick	25 cars annually.
Thos. F. Seitzinger's Sons Inc	Scrap iron and brass	175 cars annually.
Merchants & Mfgrs. Warehouse Co	Storage and warehouse	300 cars annually.
Atlanta Flour & Grain Company	Wholesale flour grain	450 cars annually.
McCord Stewart Company	Wholesale grocers	125 cars annually.
H. C. Singer Company	Wholesale grocers	30 cars annually.
Paradies & Rich	Wholesale grocers	175 cars annually.
Cox Brokerage Company	Wholesale grocers	200 cars annually.
Lee & Beall Company, Inc	Wholesale mdse. brokers	500 cars annually.
Atlanta Kindling Wood Company	Wood, charcoal	15 cars annually.
Barbers, Ga. (R. F. D. Moultrie, Ga.): Moultrie Pine & Products Company.	Tar and charcoal	10 cars annually.
Ben Hill, Ga.: J. W. Starr & Sons (Atlanta, Ga.)	Planing mill	15,000 feet daily.
Bessemer, Ala.:		
C. F. Cook	Repair shop	
F. S. Royster Guano Company	Mfgrs. fertilizer	40,000 tons annually.
Bessemer Lumber Company	Lumber, building material	200 cars annually.
Standard Oil Company	Petroleum products	50 cars annually.
Keith Perkins & Ware Company	Petroleum products	25 cars annually.
Cook & Britener	Petroleum products	25 cars annually.
Sinclair Refining Company	Petroleum products	20 cars annually.
John Colley	Warehouse	
Bessemer Feed Mills	Wholesale feed	3,000 tons annually.
Morton Hardware Company	Wholesale hardware	50 cars annually.
Blake, Ala. (R. F. D. Roanoke, Ala.): M. P. Craver.	Brick yard	30,000 weekly.
Bolen, Ga.: W. T. Brinson	Naval stores, wood	200 cars annually.
Birmingham, Ala.:		
Alabama Barrel Company	Barrels	10 cars annually.
Birmingham Brick Company	Brick	300 cars annually.
Smith Coal Company	Coal	
Hygienic Ice & Coal Company	Coal, ice	100 tons daily.
Cash Lumber Company	Lumber, sash, doors	
Phillips Lumber Company	Lumber, sash, doors	
City Sash & Door Company	Lumber, sash, doors	300 cars annually.
E. V. Sanders Lumber Company	Lumber, sash, doors	300 cars annually.
Federal Asphalt Paving Company	Paving contractors	200 cars annually.
Exchange Distributing Company	Produce, fruits	200 cars annually.
Marshall Jordan & Keith	Produce, fruits	100 cars annually.
Bell Rogers Produce Company	Produce, fruits	100 cars annually.
F. F. Norton & Sons Company	Produce, fruits	75 cars annually.
Hamilton Rogers Produce Company	Produce, fruits	50 cars annually.
Pippen Brothers Produce Company	Produce, fruits	25 cars annually.
Southern Steel Works, Inc	Steel and iron works	
Bristol, Ga.:		
Carter & Carter	Naval stores	50 cars annually.
T. L. Tuten	Naval stores	25 cars annually.
M. H. Steedly	Naval stores	50 cars annually.
J. G. Haire	Naval stores	50 cars annually.
G. H. Hunter	Naval stores	25 cars annually.
Brunswick, Ga.:		
Buick Motor Company	Automobile storage	
A. Halliday	Cooperage	25 cars annually.
M. B. McKinnon	Broker, commission mer	
C. A. Taylor	Broker, commission mer	
Glynn Canning Company	Cannery	
Georgia Veneer & Package Company	Crate material	1,000 cars annually.
Georgia Creosoting Company	Creosoting ties lumber	100,000 feet daily.
Strachan Shipping Company	Exporters	
Southern Forwarding Company	Freight forwarders	
United Supply Company	Hardware	
United Distributing Company	Hardware	
Glynn Ice Company	Ice plant, cold storage	160 tons daily.
Mutual Light & Water Company	Light plant	
Maritime Industries Company	Lumber	25,000 feet daily.
Lerio Patent Cup Company	Turpentine cups	150 cars annually.
Southern Aromatic Company	Mfgrs.	
Georgia Rosin & Products Company	Naval stores	25,000 barrels annual.
Hercules Powder Company	Naval stores	295 barrels daily.
Wall & Macklin	Packing plant	50 cars annually.
Lang Planing Mill	Planing mill	50,000 feet daily.
Stuckey & Roughton	Produce commission mer	
Clyde Steamship Company	Ship line	
City of Brunswick	Unloading track	
Downing Company	Wholesale grocers	
Lazarus & Company	Wholesale grocers	
J. J. Lissner	Wholesale grocers	

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Byromville, Ga.:		
Lester Ricks Oil Mill	Cottonseed oil mill	30 tons daily.
Groves Brothers	Cotton storage	1,000 bales.
Cobb Lumber Company	Planing mill	20,000 feet daily.
Chatterton, Ga. (R. F. D., Nicholls, Ga.):		
H. Kirkland	Naval stores	50 cars annually.
L. J. Williams	Sand	100 cars annually.
Coffee, Ga.:		
H. H. Johnson	Naval stores	20 cars annually.
Walter Bennett	Naval stores	20 cars annually.
Coolidge, Ga.:		
S. A. Sherrod	Planing mill	30 cars annually.
Boykin Harrison	Potato curing warehouse	10 cars annually.
W. S. Jones	Variety works	
Coalmont, Ala. (R. F. D., Malone, Ala.):		
Brookside Pratt Mining Company	Coal mine	700 tons daily.
Cragford, Ala.: Cragford Warehouse Company	Cotton warehouse	500 bales.
Crossland, Ga.: W. J. White, agent for the Shackelford Brown Company, Albany, Ga.	Potato-curing warehouse	10,000 bushels.
Dillon, Ga.: E. Gibson	Naval stores	50 cars annually.
Douglas, Ga.:		
R. W. Griffin	Broker	
Douglas Oil & Fertilizer Company	Fertilizer and feed	10,000 tons annually.
Watt Holmes Hardware Company	Hardware	
Douglas Ice Company	Ice	30 tons daily.
Georgia Oil Company	Kerosene oil gas	125 cars annually.
Douglas Light & Power Company	Light and water	
Douglas Marble & Granite Company	Marble and granite	
Standard Oil Company	Petroleum products	50 cars annually.
J. F. Darby & Brother	Planing mill	70,000′ daily.
Pat Darby Lumber Company	Planing mill	20,000′ daily.
Douglas Oil & Fertilizer Company	Potato-curing W. H.	25,000 bushels.
Georgia Leaf Tobacco Company	Tobacco redrying-plant	
Farmers Tobacco Warehouse Company (Pegram & Critcher, Mgrs.).	Tobacco sales warehouse	
Red Tobacco Warehouse (Knott & Sikes, Mgrs.).	Tobacco sales warehouse	
Big Tobacco Warehouse (King & Ostinger, Mgrs.).	Tobacco sales warehouse	
Growers Tobacco Warehouse (McLean & George, Mgrs.).	Tobacco sales warehouse	
Austim Company, Inc	Tobacco sales warehouse	
H. Kirkland	Turpentine products	50 cars annually.
J. L. Young Company	Wholesale groceries	
Conrad Spur, Ga. (R. F. D, Waycross, Ga.): J. D. Sweat.	Ginnery and mill	35 cars annually.
Cordele, Ga.:		
Chero Cola Bottling Company	Bottlers	
R. S. Barfield	Broker	
Cordele Compress	Cotton compress	1,000 bales daily.
Read Phosphate Company	Mfgrs. fertilizer	200 tons daily.
F. L. Bartholomew	Hardware	
Beechwood Band Mill Company	Planing mill	100,000 feet daily.
Watt Holmes Hardware Company	Retail hardware	
Williams Brothers	Storage warehouse	2,500 square feet.
Cordele Bonded Warehouse	Warehousemen	3,000 square feet.
City of Cordele Water Works	Water plant	
Heard Grocery Company	Wholesale grocers	
Pridgen Brothers	Wholesale grocers	
Durand, Ga.:		
Durand Warehouse Company	Cotton warehouse	1,000 bales.
Durand Potato Warehouse	Potato-curing warehouse	10,000 bushels.
Eureka, Ala. (R. F. D., Talladega, Ala.): Eureka Coal Company.	Coal mine	1,000 tons daily.
Fendig, Ga.: M. L. McKinnon	Naval stores	50 cars annually.
Fitzgerald, Ga.:		
Anderson Motor Company	Automobiles	
L. L. Griner	Autos, buggies, wagons	40 cars annually.
Martin Manufacturing Company	Auto repair shop	
F. B. Harris & Company	Bananas and other fruits	
Standard Supply Company	Building material	300 cars annually.
Fitzgerald Cotton Compress	Cotton compress	1,000 bales.
Ben Hill Warehouse Company	Cotton, corn, grain	
Fitzgerald Cotton Gin Company	Cotton, cotton seed, fertilizer, ice, coal.	
Planters Warehouse Company	Cotton fertilizer	3,000 bales.
Union Cotton Oil Company	Cotton gin oil mill	
Standard Warehouse Company	Cotton-mill products	50 cars annually.
Ben Hill Elevator Company	Grain elevator	12,000 bushels.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Fitzgerald, Ga.—Continued.		
Watt Holmes Hardware Company	Hardware	
Fitzgerald Hardware Company	Hardware farm implements	
Fitzgerald Ice Company	Ice factory	75 tons daily.
Fitzgerald Waste & Metal Company	Junk	
Broadhurst and Williams	Live stock automobiles	
Fitzgerald Cotton Oil Mill	Oil mill	
Standard Oil Company	Petroleum products	60 cars annually.
Sinclair Refining Company	Petroleum products	50 cars annually.
Casper Hide & Junk Company	Planing mill	15,000 feet daily.
Newcome & Young	Stave mill	
Lon Dickey Potato Curing Company	Sweet potatoes	35,000 bushels.
Cobb Guinn Tobacco Company	Tobacco redrying plant	25,000 pounds daily.
Lon Dickey Tobacco Warehouse Company (J. S. Mason, Mgr.)	Tobacco	
Central Tobacco Warehouse Company (E. C. Brooks, Mgr.)	Tobacco	
Fitzgerald Power Company	Water & lights	
Isler Grocery Company	Wholesale groceries and produce.	
Phoenix Warehouse Company	Wholesale groceries	
Davis Brothers Company	Wholesale groceries	
Gay, Ga.:		
Gay Warehouse Company	Cotton storage	2,000 bales.
W. W. Fitzgerald	Grist mill	50 bushels daily.
Gay & Keith	Potato-curing warehouse	10,000 bushels.
Guysie, Ga.: The Douglas Company	Naval stores	50 cars annually.
Gyco, Ga.: Georgia Yam Curing Company, (39 Cone St., Atlanta, Ga.)	Potato-curing warehouse	75 cars annually.
Hatley, Ga.: A. C. Whelchel & Brothers	Cotton storage	200 bales.
Haywood Spur, Ga. (R. F. D., Waycross, Ga.): J. Lindlum.	Naval stores	24 cars annually.
Helena, Ala.:		
Paramount Coal Company (Adams, Rowe & Norman, Brown; Marx Building, Birmingham, Ala., agents).	Coal mine	500 tons daily.
Buck Coal Company of Helena, Inc	Coal mine	100 tons daily.
Hortense, Ga.:		
B. T. Raulerson	Naval stores	20 cars annually.
W. D. Humphreys	Naval stores	20 cars annually.
Ideal, Ga.:		
J. T. Lightner Ginnery	Ginnery	100 bales daily.
Nelson Cotton Company	Ginnery	100 bales daily.
T. E. Nelson	Cotton warehouse	3,000 bales.
Hardison and Robertson	Grist mill	25 bushels daily.
Planters Products Company	Potato-curing warehouse	10,000 bushels.
H. C. Taylor & Company	Planing mill	300 cars annually.
Junction City, Ga.:		
Junction City Mfg. Company	Caskets	50 cars annually.
Butler Lumber Company	Planing mill	100,000 feet daily.
Greenfield & Waterman (39 Forsyth St., Atlanta, Ga.).	Sand pit	300 cars annually.
Downs Sand Company	Sand pit	500 cars annually.
J. R. Hime	Sand pit	300 cars annually.
Moorac Sand Company	Sand pit	1,000 cars annually.
La Grange, Ga.:		
Claude H. Hutchinson	Bagging and ties	200 cars annually.
Ash Supply & Coal Company	Coal	25 cars annually.
Citizens Ice & Coal Company	Coal and ice	40 tons daily.
Dunson Mills	Cotton mill	23,168 spindles.
Elm City Cotton Mill	Cotton mill	11,664 spindles.
Hillside Cotton Mill	Cotton mill	30,000 spindles.
Unity Cotton Mill	Cotton mill	11,232 spindles.
Unity Spinning Mill	Cotton mill	14,688 spindles.
Security Warehouse	Cotton fertilizer	5,000 bales.
Troupe Warehouse Company	Cotton fertilizer	8,000 bales.
La Grange Iron Works	Foundry	
Fincher-Traylor Company	Petroleum products, Fords	100 cars annually.
City Feed & Grain Company	Grain and flour	50 cars annually.
Daniel, Inc	Grain and flour	100 cars annually.
La Grange Cotton Mill Company	Oil mill	40 tons daily.
W. L. Wisdom	Marble and granite	
W. S. Askew Lumber Company	Planing mill	70,000 feet daily.
J. T. Gorham	Roofing, cement, lime	
Valley Waste Mill	Waste	10,000 pounds daily.
Dixie Grocery Company	Wholesale groceries	
R. S. Willis, jr	Wholesale groceries	
J. E. Dunson Bros. Company	Wholesale groceries	
Stamps & Company	Wholesale produce	125 cars annually.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Lilly, Ga.:		
E. H. Smith	Fertilizer	2,500 tons annually.
Lilly Gin Company	Seed dealers	15 cars annually.
Farmers Warehouse Company	Warehouse	
Lineville, Ala.:		
Clay County Oil Mill	Cottonseed oil	2,500 tons annually.
Farmers and Merchants Warehouse	Cotton storage	2,500 bales.
Farmers Union Warehouse	Cotton warehouse	1,000 bales.
Clay County Fertilizer Company	Mixing plant	3,000 tons annually.
Standard Oil Company	Petroleum products	20 cars annually.
Clay Hardware Company	Petroleum products	20 cars annually.
Lineville Motor Company	Petroleum products	10 cars annually.
Pan American Petroleum Corporation	Petroleum products	20 cars annually.
Lorne, Ala. (R. F. D., Lineville, Ala.):		
Crane & Eubanks	Sand pit	250 cars annually.
Manchester, Ga.:		
Manchester Cotton Mill	Cotton mill	25,000 spindles.
Manchester Ice & Fuel Company	Ice plant	18 tons daily.
I. R. Robertson	Oil station	
City of Manchester	Power plant	
Standard Oil Company	Petroleum products	25 cars annually.
Union Mercantile Company	Warehouse	
Mershon, Ga.:		
Davis Zirkle Lumber Company	Lumber	50 cars annually.
J. C. Strickland	Naval stores	25 cars annually.
Montezuma, Ga.:		
Buick Automobile Company	Autos and accessories	
Ford Motor Company	Automobiles	
McKenzie Hangabook Company	Builders supplies coal	
McKenzie Gin & Cotton Company	Cotton, cottonseed	
McKenzie Warehouse Company	Cotton, cottonseed meal	
Farmers Warehouse Company	Cotton fertilizer	
Montezuma Cotton Oil Company	Cottonseed oil	
Montezuma Fertilizer Company	Fertilizer	17,500 tons annually.
Coweta Fertilizer Company	Fertilizer	
Read Phosphate Company	Fertilizer	
Whitewater Power Company	Ice factory power plant	
H. A. Dover & Sons	Livestock, coal, cotton, wholesale groceries.	100 cars annually.
Reynolds Lumber Company	Lumber logs	100 cars annually.
Montezuma Knitting Mills	Mfgrs. knit underwear	
Hangabook & Perry	Mules and horses	
McKenzie Chemical Company	Peach spray mfgrs	50 cars annually.
Flint River Lumber Company	Planing mill	
Adams Company	Wholesale groceries	
Gallagher Grocery Company	Wholesale groceries	
Moultrie, Ga.:		
Nace Brick Company	Brick	
Moultrie Compress Company	Cotton compress	1,000 bales.
Moultrie Cotton Mill	Cotton mill	11,000 spindles.
Moultrie Grocery & Produce Company	Dairy products	
Moultrie Fertilizer & Mfg. Company	Fertilizer	5,000 tons annually.
Moultrie Oil & Fertilizer Company	Fertilizer	7,000 tons annually.
Colquitt County Lumber Company	Lumber	
Riverside Manufacturing Company	Mattresses	
Davis Jenkins Lumber Company	Planing mill	10,000 feet daily.
Colquitt County Tobacco Warehouse Co. (Smith and Smith, Managers).	Tobacco sales warehouse	
Wofford Oil Company	Petroleum products	15 cars annually.
Moultrie Grocery Company	Wholesale groceries	
H. P. Plair	Wholesale groceries	
Nicholls, Ga.:		
Gall & Bayley	Cross ties	
George Meeks	Cross ties, lumber	
Powers Hardware Company	Hardware supplies	
Hall Taylor Trading Company	Hardware supplies	
Nicholls Truck Growers Association	Packing house	
Norman Park, Ga.:		
Planters Warehouse Company	Cotton storage	1,000 bales.
Norman Park Brokerage Company	Potato curing warehouse	5,000 bushels.
Norman & Griffin	Naval stores	52 cars annually.
Norwich, Ga.: W. C. Harkey	Sand pit	5 cars daily.
Oglethorpe, Ga.:		
Lester Ricks Oil Company	Cotton gin, fertilizer	1,000 bales.
W. E. Webb	Cotton storage	1,000 bales.
Farmers Warehouse Company	Cotton storage	1,000 bales.
M. L. Shealey's Sons	Cotton, fertilizer	1,500 bales, 300 tons.
Cobb Lumber Company	Planing mill	100,000 feet daily.
Macon County	Petroleum products	15 cars annually.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Omega, Ga.:		
Omega Hardware Company	Cotton storage	500 bales.
J. W. Lang & Company	General merchandise	
J. H. Hornbuckle	Merchandise, livestock	
Omega Hardware Company	Hardware	
Patrick Plant Company	Vegetable plants	
Omega Plant Company	Vegetable plants	
Pelham, Ala.:		
Alabama Cooperage Company	Cooperage planing mill	15,000 feet daily.
Superior Lime & Hydrate Company	Lime manufacturers	600 cars annually.
Pioneer, Ala. (R. F. D., Birmingham, Ala.): Pioneer Lumber & Creosoting Company.	Creosoting plant	10 cars daily.
Rebecca, Ga.:		
M. L. Story	Cottonseed, peanuts	50 tons annually.
Rebecca Turpentine Company	Naval stores	36 cars annually.
Planters Warehouse Company	Warehouse	500 bales.
Roanoke, Ala.:		
Myhand Grocery Company	Coal, groceries	15 cars annually.
Handley Manufacturing Company	Cotton mill	18,000 spindles.
Roanoke Warehouse	Cotton warehouse	2,000 bales.
W. M. McMurray & Company	Feed, flour, hay, hardware	35 cars annually.
Roanoke Guano Company	Fertilizer	20,000 tons annually.
Royster Guano Company	Guano warehouse	60 tons annually.
City of Roanoke	Light plant	
Adams Planing Mill	Lumber	40 cars annually.
C. E. Warlick Marble Works	Marble works	10 cars annually.
F. R. Lane	Petroleum products	50 cars annually.
Gulf Refining Company	Petroleum products	40 cars annually.
Sinclair Refining Company	Petroleum products	25 cars annually.
W. S. Kirk	Planing mill	15,000 feet daily.
Askew Lumber Company	Planing mill	300 cars annually.
Jones & Huey	Wholesale groceries	100 cars annually.
Rockingham, Ga.:		
Carter & Carter	Naval stores	50 cars annually.
The Hatton Company	Naval stores	50 cars annually.
Haggard Stave Company	Stave mill	300 cars annually.
Haggard Love & Merritt	Produce, melons	50 cars annually.
Roma, Ala. (R. F. D., Birmingham, Ala.): Bell Saw Mill Company (Birmingham, Ala.)	Planing mill	30,000 feet daily.
Senoia, Ga.:		
Standard Oil Company	Petroleum products	30 cars annually.
L. L. Hutchinson	Potato-curing warehouse	10,000 bushels.
Georgia Peanut Growers Association	Peanuts	
Pan American Petroleum Corporation	Petroleum products	20 cars.
Sessoms, Ga.: Waycross Lumber Company	Planing mill	50,000 feet daily.
Southland, Ga.: M. O. Bryant	Grist mill	25 bushels daily.
Talbotton, Ga.:		
Farmers Warehouse	Cotton storage	1,400 bales.
Talbotton Trap Rock Company	Crushed stone	200 tons daily.
J. D. Lawson	Grist mill	25 bushels daily.
Lime Cola Bottling Company	Ice house	
Standard Oil Company	Petroleum products	36 cars annually.
Talladega, Ala.:		
Talladega Hardware Company	Automobiles	35 cars annually.
Wikle Sims Motor Company	Automobiles	50 cars annually.
Giddens Supply Company	Coal	
Farmers Warehouse Company	Cotton storage	3,000 bales.
Royster Guano Company	Fertilizer	25,000 tons annually.
Jackson Tinney Lumber Company	Planing mill	75,000 feet daily.
Southern Roads Company	Storage	
American Railway Express Company	Warehouse and office	
Sinclair Refinining Company	Petroleum products	25 cars annually.
Thomasville, Ga.:		
Watt & Tuck	Coal, lime	10 cars lime, 20 cars coal.
Georgia Crate & Basket Company	Crate material, baskets	300 cars annually.
W. H. Burch & Son	Grist mill, coal yard	30 cars annually.
Gulf Refining Company	Petroleum products	70 cars annually.
Co-Operative Oil Company	Petroleum products	20 cars annually.
Wofford Oil Company	Petroleum products	40 cars annually.
Sinclair Refining Company	Petroleum products	40 cars annually.
Texas Company	Petroleum products	120 cars annually.
Kirby Planing Mill	Planing mill	150 cars annually.
Caldwell Planing Mill	Planing mill	300 cars annually.
Robinson Hardware Company	Hardware	
Thomasville Hardware Company	Hardware	
Thomas County Tobacco Company (Guy S. Jones, Manager)	Tobacco sales warehouse	75 cars annually.

List of firms and industries served by rails of the Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Continued

Industry or firm	Character of business	Annual tonnage or approximate capacity
Tifton, Ga.:		
Tifton Coal Company	Coal	4,000 tons annually.
W. A. Puckett Coal Company	Coal and coke	50 cars annually.
Standard Oil Company	Petroleum products	60 cars annually.
The Texas Company	Petroleum products	100 cars annually.
Wofford Oil Company	Petroleum products	30 cars annually.
Pan American Petroleum Corporation	Petroleum products	25 cars annually.
Goodman Golden Lumber Company	Planing mill	20,000 feet daily.
Tifton Remilling Company	Planing mill	15,000 feet daily.
Tifton Hardwood Company	Planing mill	25,000 feet daily.
Tifton Potato Curing Company	Potato-curing warehouse	15,000 bushels daily.
Wilder Lumber Company	Planing mill	150 cars annually.
Dixie Warehouse Company (W. E. Fenner, manager).	Tobacco sales warehouse	
Imperial Tobacco Company	Tobacco redrying plant	
Banner Warehouse (J. L. Bowen, manager).	Tobacco sales warehouse	
New Brick Warehouse (S. H. Winstead, manager).	Tobacco sales warehouse	
International Agricultural Corp	Fertilizer plant	75,000 tons annually.
Tyrone, Ga.: Redwine Brothers	Fertilizer mixing plant	
Union City, Ga.:		
J. H. Estes Mfg. Company	Back bands	100 dozen daily.
L. E. Whittier	Cabinet makers	
Creel Lumber Company	Planing mill	300 cars annually.
Farmers Co-Operative Marketing Asso	Potato-curing warehouse	10,000 bushels.
Upson, Ga. (R. F. D., Douglas Ga.): J. M. Ashley.	Naval stores	50 cars annually.
Vance Spur, Ga. (R. F. D., Tifton, Ga.): Berry Rigdon.	Naval stores	50 cars annually.
Vienna, Ga.:		
Barfield Manufacturing Company	Boxes, crates	300 cars annually.
Barfield Manufacturing Company	Ice plant	20 tons daily.
[illegible]na Gin Company	Cotton gin	
[illegible]ton Brothers	Feed and corn mill	
J. P. Heard	Fertilizer mixers	500 tons annually.
Vienna Hardware Company	Hardware	
Vienna Electric Light Company	Light and power	
Wofford Oil Company	Petroleum products	25 cars annually.
Planters Products Company	Potato-curing warehouse	
J. P. Heard	Wholesale groceries	
Wadley, Ala.:		
Wadley Gin Company	Cotton ginnery	1,000 bales.
J. A. Fuller	Petroleum products	50 cars annually.
Cotton Warehouse & Storage Company	Warehouse	1,000 bales.
Warm Springs, Ga.:		
Warm Springs Casket Company	Mfgrs. of caskets	
Warm Springs Planing Mill	Planing mill	25,000 feet daily.
Waycross, Ga.:		
Bunn Cadillac Company	Automobiles	40 cars annually.
Hereford Morgan Hardware Company	Hardware	30 cars annually.
Georgia Hide & Fur Company	Hides	36 cars annually.
Sinclair Refining Company	Petroleum products	50 cars annually.
The Texas Company	Petroleum products	36 cars annually.
Enterprise Manufacturing Company	Planing mill	30,000 feet daily.
Hiers Planing Mill	Planing mill	25,000 feet daily.
Waycross Tobacco Warehouse Company (Brown and Crabtree, Mgrs.)	Tobacco sales warehouse	50 cars annually.
Watt Hardware Company	Wholesale hardware	35 cars annually.
J. J. Wilder	Wholesale honey	
Westover, Ala.: L. H. Butler	Planing mill	10,000 feet daily.
Woodbury, Ga.:		
Durand & Gill	Insecticide plant	300 tons per season.
Gulf Refining Company	Petroleum products	50 cars annually.
Anthony Lumber Company	Planing mill	10 cars annually.
Woodland, Ga.:		
Planters Warehouse Company	Cotton storage	500 bales.
Georgia Cushion & Wrapper Co	Excelsior packing mats	15 cars annually.
C. W. Matthews	Peach packing house	50 cars annually.
Mills & Trussell	Peach packing house	20 cars annually.
Braddy Brothers	Peach packing house	15 cars annually.
Wooddall & Jordan	Peach packing house	10 cars annually.
Williams & McDaniel	Peach packing house	3 cars annually.
A. G. Jordan Lumber Company	Planing mill	15,000 feet daily.
J. W. Starr & Sons (Atlanta, Ga.)	Planing mill	100,000 feet daily.
Woodward, Ala.:		
Woodstock Slag Corporation	Slag	
Woodward Iron Company	Steel and iron products	
American Tar Products Company		

Atlanta, Birmingham & Atlantic Railway Co., B. L. Bugg, receiver

(H. S. Young, A. G. F. A.—A., B. & A. Ry., Atlanta, Ga., April 1, 1926)

Sawmills, planing mills, and shingle mills (Georgia)

Owner	Post office	Daily capacity	
		Lumber (B. M.)	Shingles or crates, etc.
O. L. Luke	Ambrose, Ga	5,000	
R. D. Richardson	Ambrose, Ga	5,000	
Georgia Planing Mill ***	Alma, Ga	15,000	
B. R. Holt & Sons	Alma, Ga	15,000	10,000 shin.
H. W. Andrews	Alma, Ga	9,000	
C. C. Reeves	Alvaton, Ga	5,000	
Luther Ganner	Alvaton, Ga	5,000	
W. W. Black	Alvaton, Ga	3,000	
Frank G. Lake ***	Atlanta, Ga	20,000	
A. H. Allen	Byromville, Ga	3,000	
Treaway Lumber Co.	Byromville, Ga	8,000	5,000 shin.
Brassington Lumber Co	Byromville, Ga	20,000	
Lewis & Harroll	Browntown, Ga	15,000	
Georgia Veneer & Pkg. Co.	Brunswick, Ga		15,000 crates
Lang Planing Mill ***	Brunswick, Ga	50,000	
Maritime Industries Co. ***	Brunswick, Ga	25,000	
Miller Lumber Company	Brunswick, Ga	5,000	
C. H. Singleterry	Coolidge, Ga	5,000	
J. S. Knight & Brother	Coolidge, Ga	15,000	
W. C. Hallbrook & Son	Coolidge, Ga	8,000	
Singleterry & Griffin	Coolidge, Ga	8,000	
W. A. Jones **	Coolidge, Ga	5,000	
S. A. Sherrod	Coolidge, Ga	5,000	
Pine Products Company	Cordele, Ga., RFD	8,000	
Cordele Sash & Door Co. ***	Cordele, Ga	25,000	
Crisp County Lbr. Co. ***	Cordele, Ga	25,000	
Pat. Darby Lumber Co. ***	Douglas, Ga	20,000	
Hebbard Cypress Co. **	Hebbardville, Ga	125,000	50,000 shin.
H. M. Reed	Hortense, Ga	5,000	
Raulerson & Powell	Hortense, Ga	4,000	
J. A. and A. N. Blanton	Haralson, Ga	5,000	
H. S. Taylor & Company	Ideal, Ga	5,000	
Ideal Milling Company	Ideal, Ga	8,000	
W. N. Fowler	Ideal, Ga	8,000	
H. A. Harding	Ideal, Ga	10,000	
W. E. Butler Lumber Co. ***	Junction City, Ga	30,000	
L. M. McCharge	Junction City, Ga	5,000	
W. S. Askew Lumber Co. ***	La Grange, Ga	10,000	
Ricks Lumber Company ***	Lilly, Ga	6,000	
Means Lumber Company	Lilly, Ga	5,000	
W. E. Maddox	Lilly, Ga	10,000	
D. A. McCormick	Lilly, Ga	5,000	
L. W. Robertson & Co.	Mauk, Ga	5,000	
E. R. Yarborough	Mershon, Ga	8,000	3,000 shing.
Jenkins Planing Mill ***	Moultrie, Ga	20,000	
W. C. Holbrook & Sons	Moultrie, Ga	7,000	
Flint Lumber Company ***	Montezuma, Ga	15,000	
M. J. Dabney	Montezuma, Ga	8,000	
Smith & Hall	Montezuma, Ga., R. F. D. 1	5,000	
B. Myers	Montezuma, Ga	6,000	
W. L. Sessons	Nicholls, Ga	5,000	
Courson Lumber Company ***	Talbotton, Ga	20,000	
Cobb Lumber Company ***	Oglethorpe, Ga	20,000	
H. A. Harding	Oglethorpe, Ga	8,000	
Andrews & McLeMore	Osierfield, Ga	10,000	
R. B. Vickers	Rockingham, Ga	5,000	
Haggard Stave Mill	Rockingham, Ga	7,000	600 staves.
M. M. Deen	Rockingham, Ga	5,000	
Andrew J. Taylor	Rockingham, Ga	5,000	
T. J. Smith	Rebecca, Ga	5,000	
Plyant & Murray	Rebecca, Ga	7,000	
Woods & Evans	Rebecca, Ga	7,000	
W. B. White	Rebecca, Ga	5,000	
F. N. Rakestraw	Rupert, Ga	8,000	
A. F. Harvey	Rupert, Ga	3,000	
W. N. Fowler	Rupert, Ga	5,000	
W. J. Cooper	Senoia, Ga	6,000	
Caldwell Lumber Company ***	Thomasville, Ga	15,000	
Kirby Planing Mill ***	Thomasville, Ga	25,000	
Georgia Crate & Basket Company	Thomasville, Ga	3,000	
R. E. Davis	Thomasville, Ga., R. F. D.	10,000	

** Planing mill, shingle mill, sawmill.

*** Planing mill only.

Sawmills, planing mills, and shingle mills (Georgia)—Continued

Owner	Post office	Daily capacity	
		Lumber (B. M.)	Shingles or crates, etc.
Wilder Lumber & Shingle Co.	Tifton, Ga.		7,000 shing.
Postell Goodman Company ***	Tifton, Ga.	20,000	
Tifton Remilling Company ***	Tifton, Ga.	15,000	
Vance & Lovett *	Tifton, Ga.	10,000	
W. B. Sherrod	Tifton, Ga.	5,000	
J. W. Hall	Tifton, Ga.	3,000	
Allen Planing Mill ***	Tifton, Ga.	10,000	
Barfield Lumber Company *	Vienna, Ga.	80,000	
C. A. McCormick ***	Vienna, Ga.	9,000	
Enterprise Mfg. Co.***	Waycross, Ga.	30,000	
Hires Planing Mill Co.***	Waycross, Ga.	25,000	
J. D. Sweat	Waycross, Ga.	8,000	
Brown & Jordan	Woodland, Ga.	15,000	
S. W. Wooddall	Woodland, Ga.	8,000	
Reeves & Moore	Woodland, Ga.	10,000	
J. W. Starr & Sons *	Woodland, Ga.	60,000	
Woodbury Lumber Company	Woodbury, Ga.	8,000	
M. R. Jowers	Wray, Ga.	5,000	
Empire Lumber Company	Birmingham, Ala.	15,000	
Bell Lumber Company	Birmingham, Ala.	20,000	
J. R. Hunter	Cragford, Ala.	3,000	
O. L. Pruitt	Cragford, Ala.	5,000	
G. W. Rice	Cragford, Ala.	5,000	
J. B. Beard	Chandler Springs, Ala.	15,000	
McWilliams Lumber Company	Chandler Springs, Ala.	10,000	
King Bros. Lumber Company	Chandler Springs, Ala.	5,000	
J. W. Camp	Chandler Springs, Ala.	10,000	
B. M. Turner	Argyle, Ala.	7,000	
L. A. Shirley	Chelsea, Ala.	5,000	
T. A. Eubanks	Chelsea, Ala.	5,000	
W. F. Greene	Lineville, Ala.	25,000	
Bozeman — Saw Mill Company	Lineville, Ala.	5,000	
Saxon Lumber Company	Lineville, Ala.	20,000	
R. E. Taylor	Malone, Ala.	3,000	
O. W. Eiland	Malone, Ala.	3,000	
Wilbur Taylor	Odenville, Ala.	15,000	
Oden Elliott Lumber Co.*	Pyriton, Ala.	15,000	
W. D. Smith	Pyriton, Ala.	10,000	
Alabama Cooperage Company	Pelham, Ala.	1 car.	
L. C. Moore	Harpersville, Ala.	5,000	
W. S. Askew Lumber Company***	Roanoke, Ala.	15,000	
J. H. Allen	Roanoke, Ala.	3,000	
Kirk & Company	Roanoke, Ala.	15,000	
Jackson Tinney Lumber Co.*	Talladega, Ala.	75,000	
G. W. Evans & Sons	Wadley, Ala.	3,000	
W. L. Bentley	Westover, Ala.	7,000	
Empire Lumber Company	Westover, Ala.	20,000	
Spratley Brothers	Westover, Ala.	8,000	
W. A. J. Blackerly	Chelsea, Ala.	5,000	

* Planing mill and sawmill.

*** Planing mill only.

List of peach growers along the lines of the A., B & A. Railway

Name	Post office	Shipping point	Trees		
			4 yrs old and over	3 yrs old	2 yrs old and under
D. M. & M. Vickers	Douglas, Ga	Douglas, Ga	1,500		
A. M. Wilcox	"	"	1,500		
J. E. McMillan	Osierfield, Ga	Osierfield, Ga	1,800		
J. E. Harper	"	"			1,000
W. R. Bowen	Fitzgerald, Ga	Fitzgerald, Ga	10,000		
E. G. Haile	"	"	5,000		
B. N. Williams	Cordele, Ga	Hatley, Ga		5,000	
T. J. Slade	"	Cordele, Ga		5,000	
B. O. McKinney	"	"		2,000	
E. H. Smith	Lilly, Ga	Lilly, Ga	100		
J. E. McGough	"	"	150		
Groves Brothers	Byromville, Ga	Byromville, Ga		10,000	
W. L. McKenzie	Montezuma, Ga	Montezuma, Ga	5,000		
L. C. Chores	"	"	6,000		
Atlantic Orchard Co	"	"	8,000		
Marshall Bros	"	"	4,000		
L. E. Sheeley	Oglethorpe, Ga	Oglethorpe, Ga	12,000		
Sam Harp	"	"	5,000		
B. B. Brooks	Montezuma, Ga	Ideal, Ga	8,000		
W. D. & C. J. Harp	Ideal, Ga	"	10,000		
Garret Fouche	"	"	2,000		
W. R. Long	Reynolds, Ga	"	2,000		
W. A. Woodall	Mauk, Ga	Mauk, Ga	2,000		
D. H. Everett	"	"	1,500		
Wilder Brothers	"	"	12,000		
C. W. Moore	Junction City, Ga	Junction City, Ga	5,000	4,000	
E. P. Williamson	"	"	8,000		
W. A. Blythe	"	"	3,000	2,500	
J. B. Spinks	"	"	3,000		
C. W. Moore, jr	"	Talbotton, Ga	11,000		
R. W. Trussell, Mgr. for John Blue.	Talbotton, Ga	"	12,000		
T. B. & W. W. Smith	"	"	9,000		
Perryman Bros	"	"	5,000		
John M. Heath	"	"	8,000	3,000	
C. B. Edwards	"	"	11,000		
W. W. Childs	"	"	8,000	3,000	
W. S. Dennis	"	"	4,000		
T. H. Persons, jr	"	"	6,000	5,000	
T. C. Boswell	"	"		2,000	
Oscar Stenson	"	"	3,000		2,000
J. W. Jordan	"	"	9,000	3,500	
C. R. Culpepper, mgr., for C. K. Mahone.	"	"	16,000		
William Maxwell	"	"		2,500	
C. & G. Mitchell	"	"	4,000		
Freeman & Mahone	"	"	6,000		
E. B. Lumpkin	"	"	1,200		
C. R. Culpepper	"	"	1,000		
Mrs. B. Holmes	"	"	7,000		
Douglas Brothers	"	"	12,000		
F. R. Spivey	"	"	11,000		
C. W. Matthews	Woodland, Ga	Woodland	25,000	1,500	5,000
J. A. Braddy	"	"	7,000		5,000
C. V. Miles	"	"	5,000		1,500
Woodall & Jordan	"	"	7,000		2,000
W. C. Cook	"	"	1,200		
J. P. Corley	Manchester, Ga	"		10,000	
G. D. Miller	Woodland, Ga	"			3,000
McDaniel & Williams	"	"	1,000	3,000	
R. J. Alsobrook	"	"	2,500		2,500
W. H. Russell	"	"	2,000		
R. E. Pound	"	"		3,000	
B. A. Smith	"	"	3,000		
C. E. Garrett	"	"	2,500		
Hendrix & Starr	"	"		2,500	
Braddy Brothers	"	"	2,000		
H. H. Hawkins	"	"			1,000
T. J. Hendrix	"	"			1,000
J. D. Daniel	"	"			4,000
J. R. Braddy	"	"		1,200	300
Braddy & Miller	"	"			5,000
Clem Wright	Manchester, Ga	Chalybeate	4,000		
Cyp Bulloch	"	Manchester	3,000		
B. A. Dunn	"	"	3,000		
Smith & Folsom	"	"	4,000		
J. M. & J. G. Kollum	"	"		5,000	
W. L. Barnes	"	"	3,000		
W. H. Buchanan	Shilo, Ga	"		3,000	

List of peach growers along the lines of the A., B & A. Railway—Continued

Name	Post office	Shipping point	Trees		
			4 yrs old and over	3 yrs old	2 yrs old and under
J. H. Montgomery	Manchester, Ga.	Persico	12,000		
J. M. Guy	"	"	5,000		
D. P. & M. A. Weldon	"	"	3,000		1,000
J. K. Rollins	"	"	2,000		
W. H. Calloway	"	"	2,500		1,000
King & Edwards	"	"	8,000		
W. J. Bulloch	"	"			3,000
Mrs. Mamie Bulloch	"	"	3,500		
T. D. Harris (estate)	"	"	12,000		2,000
J. E. Lanier	"	"	3,000		
J. A. Johnson, Dr.	"	"	5,000		4,000
W. J. Weldon	"	"	500		500
J. S. Henderson	Raleigh, Ga.	"	6,500	2,000	
Knight & Gill	Woodbury, Ga.	"	11,500		3,500
A. M. Gill	"	"	10,000		6,000
Mountain Crest					
Fruit Farm	"	Persico	18,000		
A. P. O'Neal	"	"	8,000		
Blueford Fowler	Manchester, Ga.	Peters	7,000		6,000
Fowler, Peters & Harris	"	"	13,000		
Reed & Smoot	Woodbury, Ga.	Langdon	5,000	3,000	
Betts & Langdon Fruit Haven Farm	"	Betts	40,000		6,500
J. B. Carroll	"	"	13,000		
A. L. Gill	"	Woodbury	14,000		
Powers & Sims	"	"	22,000		
H. B. Jones	"	"	9,000		
H. A. Ware	"	"	6,000		
F. A. Durand	"	"	16,000		
C. L. Callahan	"	"	6,000		
W. C. Moreland	"	"	4,000	2,000	500
W. S. Williams	"	"	10,000		
G. C. Chunn	"	"	6,000		
W. P. Gill, jr.	"	"	7,000		
W. P. Gill, sr.	"	Gill	9,000	3,000	1,000
J. M. Knight	"	"	2,000		
J. B. Carroll	"	Carroll	37,000		
J. L. Dickson, Dr.	"	"	13,000		
J. L. Estes	Gay, Ga.	Gay	30,000		
Gay & Keith	"	"	11,000		12,000
W. N. Estes	"	"	12,000		3,000
H. R. Estes	"	"	15,000		6,000
A. F. Estes	"	"	6,000		
E. B. Estes	"	"	5,500		
E. T. & G. C. Mann	"	"	6,500		2,000
Roy Crouch	"	"	2,500	1,500	1,000
Ellis & Bennett	"	"	2,000		
J. W. Clark	"	"			6,000
V. K. Herndon	"	"			2,000
R. N. Estes	"	"	4,000		
O. S. Mann	Senoia, Ga.	Senoia	5,000	6,000	2,000
C. K. Kempson	"	"	2,000		
W. E. Row	"	"	5,000	2,500	
W. J. Estes	"	"		6,000	
Lee Hand	"	"	10,000		
C. C. McKnight	"	"	5,000	5,000	
R. L. Arnall	"	"	2,000		2,500
B. P. Daniel	"	"	5,000		
R. E. McKnight	"	"			2,500
A. C. Newman	Warm Springs, Ga.	Warm Springs	6,000		2,000
Reible & Stranahan	"	"	15,000	5,000	2,000
W. B. Butts	"	"	20,000	4,000	2,500
W. D. Colbert	"	"		1,600	400
W. I. Nunn	"	"		3,000	
Henry Bulloch	"	"			4,000
Ed Doyle	"	"	10,000		
John Peterson	"	"			2,500
A. S. Persons	"	"	1,000	4,000	2,000
J. R. Hathaway	"	"	3,000		
J. T. Wynne	Durand, Ga.	Durand	4,000		
Cal. & Chas. Harman	Stovall, Ga.	Stovall	5,000	8,000	7,000
Comer Brooks	Odessadale, Ga.	"			5,000
J. F. Ogletree	"	"		4,500	
J. H. & L. C. Harman	"	"			10,000
Russell Wilkinson	Mountville, Ga.	"		10,000	

Issued by: Agricultural Development Department, A. B. & A. Railway, Atlanta, Ga.
April 6th, 1926. hgb.

173D *Schedule V.—Atlanta, Birmingham & Atlantic Railway Co., B. L. Bugg, receiver—Interchange with principal connections for 5-year period ending December 31, 1925*

	Received	Delivered	Received	Delivered
	L. & N. Railroad, Atlanta, Ga.		N. C. & St. L. Ry., Atlanta, Ga.	
	Tons	*Tons*	*Tons*	*Tons*
1921	88,414	23,286	58,049	36,193
1922	37,761	43,604	58,831	57,187
1923	80,613	53,122	82,963	53,618
1924	104,012	50,662	88,414	57,076
1925	115,481	41,171	118,521	62,725
	L. & N. R. R., Birmingham, Ala.		St. L. & S. F. Ry., Birmingham, Ala.	
1921	11,712	7,111	55,980	5,238
1922	37,470	10,279	80,088	10,605
1923	53,140	30,286	98,249	14,349
1924	72,120	28,159	94,122	14,666
1925	78,293	29,510	110,109	17,962
	I. C. Railroad, Birmingham, Ala.		S. A. L. Ry., Thalmann, Ga.	
1921	16,764	7,724	51,649	17,954
1922	34,579	15,930	49,148	103,684
1923	32,921	17,800	76,173	90,579
1924	28,295	10,691	64,331	116,740
1925	35,685	14,360	85,932	181,157
	A. C. L. R. R., Offerman, Ga.		A. & W. P. R. R., Atlanta, Ga.	
1921	48,638	101,141	2,914	1,792
1922	93,613	149,732	2,883	2,606
1923	116,307	188,279	1,264	4,135
1924	115,294	210,311	3,675	3,851
1925	144,414	282,643	904	20,927
	A. G. S. R. R., Birmingham, Ala.		Sou. Ry., Birmingham, Ala.	
1921	10,258	4,634	31,045	27,800
1922	17,940	6,390	18,072	7,274
1923	29,899	13,525	8,711	10,030
1924	39,665	15,417	13,162	11,167
1925	47,291	7,146	15,734	9,301
	C. of Ga. Ry., Atlanta, Ga.		G. S. & F. Ry., Cordele, Ga.	
1921	3,865	1,046	6,271	13,852
1922	496	1,460	9,233	11,230
1923	1,107	1,961	10,504	10,796
1924	253	2,970	11,731	13,241
1925	884	2,638	8,430	18,624

	Received	Delivered	Received	Delivered
	Georgia, R. R., Atlanta, Ga.		S. A. L. Ry., Cordele, Ga.	
	Tons	*Tons*	*Tons*	*Tons*
1921	909	12,745		
1922	2,644	10,598	28,287	29,893
1923	1,515	12,092	32,692	33,785
1924	4,248	17,761	25,814	43,314
1925	12,323	39,106	34,814	35,371
	S. A. L. Ry., Atlanta, Ga.		Sou. Ry., Atlanta, Ga.	
1921	11,925	19,347	21,194	53,122
1922	11,105	26,639	29,102	72,328
1923	15,340	30,681	33,067	122,492
1924	34,992	27,199	32,911	129,645
1925	30,516	40,197	51,155	93,782

173E *Schedule VI.—Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver—Statement of predominating classes of revenue freight moved during five-year period ending December 31, 1925*

Commodity	1921			1922			1923			1924			1925		
	Orig. on A., B. & A.	Recd. from Conn.	Total tons hauled	Orig. on A., B. & A.	Recd. from Conn.	Total tons hauled	Orig. on A., B. & A.	Recd. from Conn.	Total tons hauled	Orig. on A., B. & A.	Recd. from Conn.	Total tons hauled	Orig. on A., B. & A.	Recd. from Conn.	Total tons hauled
Flour	1,735	23,445	25,180	2,416	23,140	25,556	3,451	24,328	27,779	1,800	23,180	24,980	1,500	28,276	29,776
Cotton	10,777	14,770	25,547	17,591	19,796	37,387	10,363	16,688	27,051	12,919	12,643	25,562	19,264	15,142	34,406
Fruits and vegs	13,651	82,001	95,652	26,263	83,812	110,075	15,595	98,942	114,537	30,627	93,686	124,313	34,100	104,745	138,845
Other prod. of agr	1,008	4,693	5,701	1,919	6,839	8,758	1,624	5,628	7,252	2,773	5,830	8,603	5,447	8,392	13,839
Coal	13,476	132,131	145,607	51,309	89,324	140,633	71,305	107,950	179,256	60,420	114,191	174,611	42,435	142,149	184,584
Other prod. of mines	617	3,912	4,529	219	11,049	11,268	3,803	42,430	46,233	902	35,385	36,287	788	70,473	71,261
Sand, stone, etc	51,219	15,839	67,058	53,682	23,480	77,162	114,141	47,319	161,460	127,819	86,559	214,378	140,236	40,508	180,744
Ties	22,507	18,105	40,612	24,777	16,260	41,037	45,821	35,434	81,255	40,436	21,968	62,404	16,265	10,167	26,432
Lumber	68,985	68,957	137,942	167,060	61,774	228,834	244,715	64,810	309,525	222,982	73,745	296,727	184,169	64,578	248,747
Logs, posts, poles, etc	62,714	16,613	79,327	97,572	8,895	106,467	95,107	8,774	103,881	126,849	15,103	141,952	131,098	12,001	143,099
Other prod. of forest	8,001	12,473	20,474	24,947	5,526	30,473	31,336	4,689	36,025	35,870	7,158	43,028	39,528	8,459	47,987
Bar & sheet metal	5,295	8,392	13,687	19,728	5,555	25,283	19,791	4,025	23,816	23,364	2,367	25,731	32,106	5,153	37,259
Cement, lime, & brick	2,883	29,837	32,720	9,046	31,541	40,587	14,097	44,891	58,988	65,963	70,641	136,604	99,500	110,719	210,219
Fertilizer—all	5,687	10,850	16,537	15,011	29,233	44,244	21,934	39,644	61,578	23,134	31,804	54,938	20,975	37,342	58,317
Chemicals & Expl	24,351	32,576	56,927	28,099	28,525	56,624	29,529	26,795	56,324	33,457	31,073	64,530	31,836	39,377	71,213
Other mfg. misc	20,303	59,915	80,218	42,729	45,375	88,104	37,236	54,263	91,499	39,992	50,586	90,578	53,663	70,103	123,766
L. C. L. goods	33,093	27,637	60,730	43,112	27,529	70,641	52,291	29,106	81,397	56,412	32,680	89,092	63,900	35,798	99,698
Total	346,302	562,146	908,448	625,480	517,653	1,143,133	812,139	655,716	1,467,856	905,719	708,599	1,614,318	916,810	803,382	1,720,192
Total tonnage hauled	394,958	676,898	1,071,856	764,415	682,958	1,447,373	954,337	877,045	1,831,382	1,048,852	942,731	1,991,583	1,084,626	1,054,861	2,139,487

Schedule VII

Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver

Summary of freight traffic for the five years ended December 31, 1925—Revenue freight

Years ended June 30	Average mileage operated	Ton-miles, total	Ton-miles per mile of road	Predominating classes	Trend or direction	Tonnage originating on line	Tonnage received from connection
1921	632.52	187,896,031	296,743	See statement next attached.	East	394,938	676,808
1922	632.52	264,322,750	417,888	"	"	706,066	691,442
1923	632.52	328,882,259	519,955	"	"	954,337	877,045
1924	632.52	358,397,659	566,619	"	"	1,048,852	942,731
1925	632.52	410,522,296	649,027	"	"	1,084,626	1,054,861

Schedule VIII

Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver

Summary of passenger traffic for the five years ended December 31, 1925

Year	Average miles operated	Passenger-miles, total	Passenger-miles per mile of road
1921	635.19	12,577,446	19,801
1922	635.19	15,281,973	24,006
1923	635.19	18,174,413	28,613
1924	635.19	16,670,000	26,053
1925	635.19	16,362,000	25,570

Schedule IX

Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver

Statement of net railway operating income for the five-year (5) period ending December 31, 1925

Year	Railway operating revenues	Railway operating expenses	Net revenue from railway operations	Net railway operating income
1921	$3,201,634.38	$4,660,666.47	$1,459,032.09	$1,774,[illegible]23
1922	4,017,227.86	4,237,133.68	219,905.82	460,567.23
1923	4,638,689.39	4,568,640.56	70,048.83	162,492.32
1924	4,810,481.95	4,389,110.67	421,371.28	107,719.25
1925	5,448,188.11	5,028,165.62	420,022.49	71,501.31

Schedule X

Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, receiver

Statement of road operated at December 31st, 1925

	Miles of road	Miles of second main track	Miles of yard tracks and sidings	Total, 1925
Termini between which road extends:				
Brunswick, Ga., Birmingham, Ala.	454.69	1.55	144.58	600.82
Sessoms, Ga., Waycross, Ga.	25.63		5.05	30.68
Fitzgerald, Ga., Thomasville, Ga.	80.39		14.73	95.12
Manchester, Ga., Atlanta, Ga.	76.35		23.91	100.26
Total main line	637.06	1.55	188.27	826.88
Spurs and sidings jointly owned:				
Brunswick, Ga., Birmingham, Ala.			7.52	7.52
Manchester, Ga., Atlanta, Ga.			.32	.32
Total jointly owned			7.84	7.84
Operated under trackage rights:				
L. & N. R. R. in Birmingham, Ala.	.50	.50		1.00
A. C. L. R. R. in Waycross, Ga.	.60			.60
Southern Ry. in Atlanta, Ga.	1.72	1.72		3.44
Total trackage rights	2.82	2.22		5.04
Total operated	639.88	3.77	195.56	839.21
Tracks in Georgia	485.41	3.27	148.49	637.17
Tracks in Alabama	154.47	.50	47.07	202.04

Spur tracks and sidings jointly owned:				
Brunswick, Ga.	A. B. & A. Ry.	A. C. L. R. R. and Southern Railway		1,377 feet.
Offerman, Ga.	"	" " "		2,115 "
Douglas, Ga.	"	" " "	Ga. & Fla. Ry.	1,243 "
Cordele, Ga.	"	" " "	G. S. & F. Ry.	316 "
LaGrange, Ga.	"	" " "	A. & W. P. R. R.	22,682 "
LaGrange, Ga.	"	" " "	M. & B. R. R.	1,802 "
Roanoke, Ala.	"	" " "	C. of Ga. Ry.	1,487 "
Talladega, Ala.	"	" " "	Southern Ry.	2,675 "
Helena, Ala.	"	" " "	Eureka Coal Co.	5,532 "
Bessemer, Ala.	"	" " "	St. L. & S. F. R. R.	480 "
Union City, Ga.	"	" " "	A. & W. P. R. R.	1,673 "
Total				41,382 "

174 *Supplemental application of Atlanta, Birmingham and Coast Railroad Company for construction by the commission of an order entered by the commission in Finance Docket 5454, December 21, 1926*

To the Honorable Interstate Commerce Commission, Washington, D. C.:

The Atlanta, Birmingham and Coast Railroad Company, petitioner herein (hereinafter sometimes called the New Company), is a corporation organized under the laws of the State of Georgia as successor, after foreclosure, of Atlanta, Birmingham and Atlantic Ry. Co. (hereinafter sometimes called the Old Company) and under its charter and pursuant to the said laws of the State of Georgia owns all of the properties, rights, powers, privileges, and franchises heretofore owned and/or enjoyed by said Atlanta, Birmingham and Atlantic Ry. Co.

Petitioner respectfully prays that this commission, or Division 4 thereof, will consider that portion of the order entered by Division

4 on December 21, 1926, in Finance Docket 5454, "Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co.," reading as follows:

"Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of *the amount received therefor*." (Italics ours.)

and will enter its further order, construing said condition and authorizing this petitioner to set up on its accounts as the cost of road purchased the amount actually received by said Atlanta, Birmingham and Coast Railroad Company in exchange for its preferred and common capital stock, as in said condition set forth. And in support of said prayer, this petitioner sets forth the following facts, which appear in the record in said Finance Docket 5454, and in Finance Docket 5470, application of Atlantic Coast Line Railroad Company, which was contemporaneously considered by this commission.

1. Prior to February, 1926, the Atlanta, Birmingham & Atlantic Ry. Co. was in the hands of a receiver. The property was hopelessly insolvent. A committee representing the majority of the bondholders approached the Atlantic Coast Line in an effort to arrange a sale of the properties and franchises of said railroad. On February 23, 1926, an agreement was reached between the said bondholders' committee and Atlantic Coast Line Railroad Company. The Atlantic Coast Line Railroad Company declined to purchase the property and franchises of the Atlanta, Birmingham & Atlantic Ry. Co., but agreed with the bondholders that if they would purchase said property and franchises at foreclosure sale and would thereafter organize a new company and convey said properties to such new company it, the said Atlantic Coast Line Railroad Company, would purchase from said bondholders the entire voting common capital stock for the consideration named in said agreement; to wit, cash sufficient to pay the obligations of the old company prior to the mortgages securing the bonds, equipment obligations, and obligations of the receiver, substantially as set forth in Exhibit A of said agreement, and would guarantee the preferred stock of said new company, as in said agreement set forth.

2. Application was thereafter filed by the said bondholders with this commission and was given Finance Docket 5454, above mentioned. Like application was filed by Atlantic Coast Line Railroad Company, asking authority to acquire said capital stock and to assume the obligations provided in said contract, and was given

Finance Docket 5470. The two said applications were heard and considered together.

3. On October 26, 1926, this commission entered its first report and order in said two applications. Said report showed that, pursuant to the agreement aforesaid, the bondholders had appointed a committee which had bid in the property of the Atlanta, Birmingham & Atlantic Ry. Co. at foreclosure sale, said bid being conditioned upon substantial approval of the plan by this commission. In this report it was stated—

"There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line is in the public interest. * * * Approval should therefore be given and the necessary authority issued, unless there be something in the terms and conditions of the proposed acquisition, or in the consideration, so inequitable as to require modification in the public interest. We find nothing of this character in the arrangement."

In the report the following statement also appears—

"The statement of the investment accounts of the New Company has not received consideration by the applicants, but they indicate their willingness to subscribe to such reasonable restriction as we may prescribe."

At the end of the said report of October 26, 1926, the following appears—

"The New Company has not been incorporated. We are advised by counsel for the applicants that incorporation under the laws of the State of Georgia is considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the New Company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to asume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the New Company accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order."

Pursuant to said report, the bondholders committee that had purchased the properties of the Old Company, as aforesaid, applied to the State of Georgia for a charter, as successors at foreclosure sale of Atlanta, Bimingham & Atlantic Railway Company. Said charter was issued. By section "eighth" thereof it is provided—

"The company may issue and dispose of all or any of the said fifty-two thousand shares of preferred stock and all or any of said one hundred fifty thousand shares of common stock for such cash, property, real or personal, or other consideration and upon such terms or conditions as may be determined from time to time by the board of directors * * * and, without limiting the generality of the foregoing, authority is hereby conferred for the issue of all or

any of said fifty-two thousand shares of preferred and/or said one hundred and fifty thousand shares of common stock *for the purpose of acquiring and paying for the property and assets described* in article first hereof and for the purpose of carrying out the above-mentioned plan and agreement of reorganization dated February 23, 1926." (Italics ours.)

These facts and a copy of said charter were filed with this commission in a supplemental application and, thereafter, on December 21, 1926, this commission entered its second order in said Finance Dockets 5454 and 5470, approving the issuance of the stock as in said plan contemplated, and authorizing the Atlantic Coast Line Railroad Company to acquire control of said New Company by the acquisition of all of its common capital voting stock. By said order, it was provided, as hereinbefore set forth, that authorization was granted—

"Upon the express condition, that, for the purposes of the accounting as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of *the amount received therefor.*" (Italics ours.)

3. Thereafter, this petitioner, Atlanta, Birmingham and Coast Railroad Company, secured the services of Haskins & Sells, certified public accountants, of the city of New York, to examine the books and accounts of the Old Company and to recommend to this petitioner the form and manner of opening the books of account of the Atlanta, Birmingham and Coast Railroad Company pursuant to and upon conditions set forth by the commission in its order aforesaid. Said certified public accountants thereafter submitted a report recommending to this petitioner the form of the accounts to be set up upon its books under the terms of said conditions. A copy of said report, marked "Exhibit A," containing a condensed tentative balance sheet at the commencement of business on January 1, 1927, is hereto attached.

Said Haskins & Sells, in said report, in substance reported to this petitioner that inasmuch as the record showed that the New Company had purchased the property of the Old Company from the bondholders committee (the purchasers at foreclosure sale), and had paid said bondholders committee for said property by issuing to said bondholders committee, or their nominees, all of the preferred and all of the common capital stock authorized by its charter; that said petitioner had received for the common stock aforesaid, the difference between the total value of the property conveyed and the amount of the preferred stock at par. They further recommended that in setting up investment in road and equipment petitioner should use a sum equal to the value of the property so

received by it in exchange for its common stock and preferred stock, the value of the entire property so received be reckoned upon the basis found by this commission in its valuation of said property in Valuation Docket No. 1, Valuation of the Atlanta, Birmingham & Atlantic Ry. Company.

Thereafter, and pursuant to said report, this petitioner submitted to the bureau of accounts of this commission a tentative balance sheet in the form recommended by Haskins & Sells, as aforesaid, and were advised later, by Mr. Wylie, chief of said bureau, by letter dated August 3, 1927, that said balance sheet was disapproved and, in lieu thereof, directing this petitioner to set up in its accounts as the value of its investment in road and equipment, the par value of the preferred stock issued, plus the amount paid by the Atlantic Coast Line Railroad Company to the bondholders, or upon their order, as purchase price of the common capital stock aforesaid, none of which said money was paid to or ever reached or was "received" by said Atlanta, Birmingham and Coast Railroad Company, petitioner herein. A copy of Mr. Wylie's letter is attached hereto, marked "Exhibit B."

This petitioner therefore alleges:

(1) That the director, bureau of accounts, in his ruling aforesaid, has confused the amount paid to and received by Atlanta, Birmingham and Coast Railroad Company for the common stock, with the amount subsequently paid to or upon direction of the bondholders' committee, by the Atlantic Coast Line Railroad Company, as consideration for said common stock, assigned to the Atlantic Coast Line Railroad Company upon the order of said bondholders' committee.

(2) That the charter of Atlanta, Birmingham and Coast Railroad Company, in section "eighth," hereinbefore set forth, authorizes the issuance of the preferred and common stock of said company, specifically "for the purpose of acquiring and paying for the property and assets" of the Atlanta, Birmingham & Atlantic Ry. Co., and that, pursuant thereto, the Atlanta, Birmingham and Coast Railroad Company "received" for said stock the property aforesaid.

(3) That the value of said property, so received by the Atlanta, Birmingham and Coast, has been taken by Haskins & Sells to be the value thereof, as found by this commission, after full consideration, in Valuation Docket No. 1, Valuation of Atlanta, Birmingham & Atlantic Railway Company.

(4) That the value of the property thus acquired by this company can not, in truth, be measured by a price subsequently paid by another as a consideration for a part of the stock of this company; that, therefore, the ruling by the director of the bureau of accounts in his letter aforesaid, directing the auditor of the petitioner that "It will be necessary for you to consider the sum of $4,080,699.80 as cash value of 150,000 shares of no par stock" in setting up the value of the

property so acquired by this company, would require of this company a perversion of the facts and would perpetuate upon the books of this company a statement in conflict with said facts, and in conflict with the true purpose and intent of the order of the commission aforesaid.

(5) That the ruling of the director of the bureau of accounts in requiring this petitioner to set up upon its books as the value of the property acquired by it a sum materially less than the value of said property, as found by this commission, is in direct conflict with the ruling made by said bureau of accounts in the matter of the reorganization of the Georgia & Florida Railroad. This petitioner is advised and believes and therefore asserts that the said bureau of accounts has directed the auditor of the Georgia & Florida Railroad, which has recently been reorganized after foreclosure, that it will approve entries charging account 701 "With the combined tentative final and final valuation of the old properties acquired" by said successor company, as the result of said foreclosure. As basis for this statement petitioner attaches hereto, marked "Exhibit C," a letter purporting to be a copy of a letter dated July 1, 1927, written by Mr. Alexander Wylie, director, addressed to Mr. M. T. Lanigan, auditor, Georgia & Florida Railroad.

This petitioner asserts that it is seeking by this petition to obtain an order authorizing it to set up in its books of account, as the value of the property acquired by it at foreclosure of the Atlanta, Birmingham & Atlantic Ry. Co., entries charging its accounts with the final valuation of the old properties acquired, as fixed by the commission.

Petitioner further asserts that it accepted the authority granted by the commission upon its said application in Finance Docket 5454, subject to the condition imposed by this commission, taking said condition to mean what the language thereof clearly implied; that in accordance with said language it is proposed to set up on its books as the value of the common stock aforesaid issued by it, the value required by said condition, to wit, the value of the property "received therefor"; that it never received the said sum of $4,080,699.80 paid by Atlantic Coast Line Railroad Company to the bondholders committee or their nominees nor any part thereof, and that the ruling of the bureau of accounts directing this petitioner to set up said sum as the value of the common stock issued instead of the value of the property actually received by this petitioner for said stock is a perversion of the condition set forth in the order of Division 4 aforesaid, would require a misstatement of fact upon the books of this petitioner and is not in accord with the condition imposed by the commission and accepted by this petitioner in this proceeding.

Petitioner therefore prays that it be granted a hearing by this commission or by Division 4 and afforded opportunity at said hearing to appear by counsel and present its oral argument in support of this petition and that the commission enter further or supplemental

order directing and authorizing this petitioner to set up upon its books as the value of the common stock aforesaid, the value of the property received by this petitioner therefor, as fixed by this commission in Valuation Docket No. 1, aforesaid.

This petition is made and filed by George B. Elliott, advisory counsel for the petitioner herein, pursuant to authority conferred by the board of directors of the Atlanta, Birmingham and Coast Railroad Company, petitioner aforesaid, adopted at the meeting held in New York on the 17th day of August, 1927, certified copy of which is hereto attached.

Copies of this petition are, contemporaneously with the filing hereof, being served by petitioner upon all parties or attorneys who appeared at the hearing or oral argument in Finance Docket No. 5454.

Respectfully submitted.

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY,
By GEORGE B. ELLIOTT, *Advisory Counsel.*

The vice president called attention of the board to letter from Doctor Wylie, director, bureau of accounts, Interstate Commerce Commission, disapproving recommendation of Messrs. Haskins & Sells, certified public accountants, as to form of balance sheet to be entered on the books of account of this company, and directing that said balance sheet be set up on a different basis. After discussion, it was, on motion, duly made and seconded, unanimously

RESOLVED, that this company file supplemental application with the Interstate Commerce Commission asking for a construction of the order of the commission issued December 21st, 1926, Finance Docket No. 5454, specifically authorizing this company to enter on its books its assets and liabilities in the form recommended by Messrs. Haskins & Sells, certified public accountants.

RESOLVED, FURTHER, that George B. Elliott, advisory counsel of this company, be and hereby is designated as the executive officer to prepare and file with the Interstate Commerce Commission a supplemental application for an order, authorizing this company to enter on its books its assets and liabilities in the form recommended by Messrs. Haskins & Sells aforesaid, and as such executive officer to make return to any questionnaire that may be required by the commission in such supplemental proceeding.

I, Herbert L. Borden, secretary of the Atlanta, Birmingham and Coast Railroad Company, do hereby certify that the above and foregoing is a correct excerpt from the minutes of meeting of the board of directors of the Atlanta, Birmingham and Coast Railroad Company, duly called and held at 71 Broadway, in the city of New York, N. Y., on the seventeenth day of August, 1927, at which a quorum was present and voted.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Atlanta, Birmingham and Coast Railroad Company this eighteenth day of August, 1927.

[SEAL.] HERBERT L. BORDEN,
Secretary.

174A *Exhibit A to supplemental application*

Haskins & Sells, certified public accountants, offices in the principal cities of the United States of America and in London, Paris Berlin, Shanghai, Montreal, Havana, Mexico City

30 BROAD STREET, NEW YORK,
June 7, 1927.

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY,
Atlanta, Georgia.

DEAR SIRS: We have given careful consideration to the basis on which your books should be opened as of January 1, 1927, in order properly to record the property and other assets, rights, franchises, and accounts of the Atlanta, Birmingham and Atlantic Railway Company, taken over from the receiver of that company as at 12.01 a. m. January 1, 1927.

We submit a tentative balance sheet at the commencement of business January 1, 1927. This balance sheet has been prepared upon the basis of the values shown by the books of the predecessor company, the Atlanta, Birmingham and Atlantic Railway Company, as of December 31, 1926, except for investments in road and general expenditures, as to which we have used the cost of reproduction new, as of June 30, 1914—Interstate Commerce Commission's valuation—plus additions and betterments on investment in road (net) to December 31, 1926. This basis is conservative and, in our opinion, is proper.

The order of the Interstate Commerce Commission dated December 21, 1926, authorizing the issuance of the company's preferred and common capital stocks contained the following proviso:

"Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

This proviso is susceptible of different interpretations, but since the actual consideration received by the company for the issuance of its preferred and common stocks was the net assets of the predecessor company, the basis of stating the accounts as outlined in the foregoing, in our opinion, conforms to the order of the commission. No more accurate determination of the value of the property appraised by the commission is available than that appraisal. This value, plus the other net assets and minus the par value of the preferred stock issued, must of necessity be the cash value of the common stock issued.

The only other interpretation of the commission's order which is different in principle is that the value of the net assets acquired by the company is represented by the par value of the preferred stock and the amount of cash actually expended by the Atlantic Coast Line Railroad Company. In our opinion, this interpretation is not applicable, for the following reasons:

(a) The order specifies that after stating the cash value of the preferred stock on a basis not in excess of its par value the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor. The record of the reorganization, the orders of the court, the charter of the company, and the report and preliminary order of the commission all show that the plan which was approved contemplated the issuance of the preferred and common stocks in consideration of conveyance to the company of the property and assets formerly owned by the Atlanta, Birmingham and Atlantic Railway Company; and that the preferred and common stocks were in fact issued in consideration of the transfer to the company of such property and assets, which had been acquired at foreclosure sale by a purchasing committee representing the bondholders.

(b) The record of the reorganization further shows that no part of the money to be paid by the Atlantic Coast Line Railroad Company was to be paid to the new company.

(c) The records show that the new company received no money or other property from the Atlantic Coast Line Railroad Company.

Since the company received nothing in the way of money or property from the Atlantic Coast Line Railroad Company, this latter interpretation of the commission's order should not, in our opinion, be adopted; that is to say, since the Atlanta, Birmingham and Coast Railroad Company received nothing from the Atlantic Coast Line Railroad Company, the amount expended by the Atlantic Coast Line Railroad Company should not be set up on the books of the new company as the amount received for its common capital stock.

Furthermore, it is obvious that the amount of cash expended by the Atlantic Coast Line Railroad Company is not a measure of the value of the property received by the Atlanta, Birmingham and Coast Railroad Company, but represents merely the immediate and direct cash cost, exclusive of the guaranties and other considerations, of the common stock to the stockholder—the Atlantic Coast Line Railroad Company. In no other reorganization which has come to our notice has it been considered that the value of the property to the corporation is fixed by the cost of the stock to the stockholders. If such a basis were used in this case, the investment in road would be stated at an amount which represents only a small percentage of its value as appraised by the Interstate Commerce Commission.

Yours truly,

(Signed) HASKINS & SELLS.

[Copy.]

Atlanta, Birmingham & Coast Railroad Co.—Tentative balance sheet at the commencement of business January 1, 1927

ASSETS

Investment in road and equipment:			
Road		$23,051,260.00	
Equipment		4,306,680.00	
General expenditures		2,113,939.00	
Total investment in road and equipment			$29,471,859.00
Miscellaneous physical property:			
Non-carrier land and buildings		960,241.30	
Jacksonville extension		301,218.99	
Leased rail, etc.		1,509.71	
Total miscellaneous physical property			1,262,970.00
Investments in affiliated companies:			
Eastern Realty Company—			
Capital stock		122,500.00	
Notes receivable		74,680.00	
Total investments in affiliated companies			197,180.00
Other investments: Capital stock of the Atlantic Compress Company			1,100.00
Total investments			30,933,109.00
Current assets:			
Cash on hand and on deposit		57,691.69	
Cash in transit from agents and conductors		50,446.81	
Deposit with Fulton National Bank, Atlanta, Georgia		39,488.06	
Deposit with Equitable Trust Company, New York		194,693.28	
Deposit with Guaranty Trust Company of New York		3,178.13	
Special deposits—			
Old Colony Trust Company	$50.00		
Farmers' Loan and Trust Company	125.00		
Columbia Trust Company	2,241.65		
Columbia Trust Company for equipment obligations	25.00		
Columbia Trust Company for organization expenses	559.57		
		3,001.22	
Traffic and car service balances receivable—			
Scrip mileage unreported	70.84		
Interline freight balances receivable	28,243.72		
		28,314.56	
Net balance receivable from agents and conductors		26,258.41	
Miscellaneous accounts receivable—			
Freight claims collectible	13,604.16		
Bills collectible	264,561.29		
		278,165.45	
Materials and supplies—			
Coal stock	61,555.29		
Commissary stock	10,019.88		
Roadway stock	424,648.34		
Store stock	285,229.94		
Mechanical store stock	37,130.18		
		818,583.63	
Other current assets, way bills in transit, advances		3,051.43	
Total current assets			1,302,932.67
Deferred assets:			
Working fund advances—			
Southern Freight Association		450.00	
Southeastern Passenger Association		100.00	
Southern Freight Association		704.00	
Southeastern Demurrage and Storage Bureau		416.00	
Southern Weighing and Inspection Bureau		1,088.00	
Total deferred assets			2,758.00
Unadjusted debits:			
Insurance premiums paid in advance		1,122.64	
Suspended debits		25.63	
Freight claims unadjusted		17,234.72	
Material freight clearing account		.57	
Car repair bills, American Railway Association accrual		58,453.30	
Freight revenue estimate		49,569.23	
Passenger revenue estimate		3,520.00	
Hire of freight cars, accrual		34,999.32	
Pullman surcharge, accrual		483.84	
Department bills		139.74	
Fitting up new steel center sills		549.27	
Material store expense		D 66.81	
Claim agents' drafts, suspense		D 19.00	
Vouchers for payment of interest in excess of accruals		11,905.76	
Total unadjusted debits			177,918.21
Total			32,616,617.88

"D" denotes decrease.

LIABILITIES

Capital stock:			
Preferred stock 5% cumulative from January 1, 1928 (authorized, 52,000 shares of $100.00 each; outstanding, 51,803 shares)		$5,180,300.00	
Common stock (authorized and outstanding, 150,000 shares without par value)		24,553,567.55	
Total capital stock			$29,733,867.55
Long-term debt			
Funded debt unmatured—			
Georgia Car and Locomotive Company (for receiver's notes, numbers 29 to 32 and 34 to 40, inclusive, eleven notes, secured by equipment of 30,000 series, $7,500.00 each, one maturing each month)		82,500.00	
Virginia Bridge and Iron Company (for receiver's notes, numbers 49 to 66, inclusive, seventeen notes of $10,000.00 each and one—the last—of $7,000.00, secured by equipment of 57,000 series, one maturing each month)		177,000.00	
Virginia Bridge and Iron Company (for receiver's notes, numbers 71 to 91, inclusive, twenty-one notes of $3,000.00 each, one maturing each month, secured by equipment of 12,000 series)		63,000.00	
Total long-term debt			322,500.00
Current liabilities:			
Traffic and car service balance payable—			
Car service balances, payable	$64,018.46		
Interline ticket balances, payable	15,088.98	79,107.44	
Audited accounts and wages payable—			
Audited vouchers	240,575.50		
Pay rolls	203,830.23	444,405.73	
Miscellaneous accounts payable—			
Auto Sales Corporation	26.40		
Claim agents' drafts	215.50		
Freight claims payable	8,809.96		
Ticket redemption drafts	43.86		
Tie and timber drafts	23.80		
Agents' drafts in transit	4,596.96		
Due to reorganization committee for redemption of bonds	44.07	13,760.55	
Interest matured unpaid—			
Atlantic & Birmingham Railway Company first mortgage bonds—			
Coupon number 33, due July 1, 1920	25.00		
Coupon number 34, due January 1, 1921	25.00	50.00	
Atlanta, Birmingham and Atlantic Railway Company income bonds—			
Coupon number 1, due September 1, 1916	166.65		
Coupon number 2, due March 1, 1917	200.00		
Coupon number 3, due September 1, 1917	200.00		
Coupon number 4, due March 1, 1918	200.00		
Coupon number 5, due September 1, 1918	325.00		
Coupon number 6, due March 1, 1919	300.00		
Coupon number 7, due September 1, 1919	425.00		
Coupon number 8, due March 1, 1920	425.00	2,241.65	
Unmatured interest accrued—			
Georgia Car and Locomotive Company, notes 29 to 32 and 34 to 40, inclusive	6,857.60		
Virginia Bridge and Iron Company, notes 49 to 66, inclusive	8,031.99		
Virginia Bridge and Iron Company, notes 71 to 91, inclusive	1,920.07	16,809.66	
Other current liabilities—			
Waybills in transit, prepaid	18,099.41		
Order notify deposits with agents	209.26	18,308.67	
Total current liabilities			574,683.70
Deferred liabilities:			
Other deferred liabilities—			
City of Birmingham, Alabama		786.57	
Talbottom Trap Rock Company		562.07	
Alabama Cooperage Company		307.91	
Jefferson Lumber Company		217.68	
Walker Roofing Company		131.12	
Steel Saw Mill Company		54.62	
E. L. Vance Lumber Company		6.65	
Wiggington Cooperage Company		95.71	
T. A. Eubanks		163.42	
Buck Coal Company		682.43	
J. T. Dyal		372.36	
Vance Sand Pit		321.57	
Total deferred liabilities			3,702.11

Unadjusted credits:		
Tax liability		$7,966.92
Other unadjusted credits—		
Unmatured rents accrued, Atlanta Terminal Company	$750.00	
Southern interchangeable mileage	1,319.25	
Store freight clearing account	710.20	
Suspended credits	34,999.00	
Reserve for personal injuries account No. 430	15,000.00	
Fruit Growers Express, refrigeration	3,034.63	
		55,780.14
Accrued depreciation, road—		
Station and office buildings, frame	184,689.35	
Station and office buildings, brick	35,081.98	
Roadway buildings	121,215.31	
Water stations	41,542.51	
Fuel stations	14,712.88	
Shops and engine houses	52,977.19	
Wharves and docks	155,692.38	
Power plant buildings	6,221.18	
		611,232.78
Accrued depreciation, equipment—		
Locomotives, freight	482,284.09	
Locomotives, passenger	75,990.05	
Locomotives, switching	66,512.91	
Freight-train cars, wood	403,954.28	
Freight-train cars, steel	147,118.16	
Passenger-train cars	93,340.91	
Motor cars	3,993.29	
Work equipment, private cars	10,277.74	
Work equipment, miscellaneous	23,237.20	
Automobiles	2,196.76	
		1,309,884.68
Total unadjusted credits		$1,981,864.32
Total		32,616,617.88

174B *Exhibit B to supplemental application*

INTERSTATE COMMERCE COMMISSION,
BUREAU OF ACCOUNTS,
Washington, Aug. 3, 1927.

434850

Mr. E. L. GREENE,
Auditor, Atlanta, Birmingham and
Coast Railroad Company, Atlanta, Georgia.

DEAR SIR:—Receipt is acknowledged of your letter of June 20, 1927, file 56,000, submitting copies of opening entries recording the acquisition of the property of the Atlanta, Birmingham and Atlantic Railroad Company, together with report prepared by Haskins & Sells, setting forth their reasons why the proposed entries should be approved.

The entries submitted are not acceptable in that the initial charge to account 701, "Investment in road and equipment," is based upon a valuation (reproduction cost new) instead of cost. This charge is excessive in the sum of the difference between $24,553,567.55 and $2,162,582.34, or $22,390,985.21, the former sum representing the alleged value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line Railroad in consideration of the payment by that company of current outstanding liabilities of the receiver, reorganization expenses, etc., amounting in the aggregate to $4,080,699.80. This sum less $1,918,117.46, representing depreciation charges set up in account 775, "Accrued depreciation, road," and 776, "Accrued depreciation, equipment," constitutes the $2,162,582.34 referred to above.

The commission's order of October 26, 1926, under Finance Docket No. 5454 and your company's certificate of notification to the commission dated January 10, 1927, explicitly sets forth that the no-par common stock shall be and was actually issued to the Atlantic Coast Line in consideration of that carrier assuming the obligations before mentioned.

While it is true, as stated by Haskins & Sells, that your company did not receive actual cash or property as a result of the action of the Atlantic Coast Line, your company, however, was directly benefited thereby to the extent of $4,080,699.80. Therefore, it will be necessary for you to consider the sum of $4,080,699.80 as the cash value of the 150,000 shares of no-par stock issued to the Coast Line Railroad Company. Assuming, therefore, that the other assets and liabilities are correctly stated in the tentative balance sheet prepared by Haskins & Sells, in compliance with the orders of the commission you are directed to reduce the initial charges to account 701 by $22,390,985.21, the compilation of which is explained in the second paragraph hereof.

As the correction will place the initial charge to investment account on basis of money costs, it is of course proper that the depreciation reserves referred to in the second paragraph hereof should be cancelled.

Please submit corrected copies of the opening entries to this bureau for completion of its files.

Your very truly,

(s.) ALEXANDER WYLIE,
Director.

1740 *Exhibit C to supplemental application*

INTERSTATE COMMERCE COMMISSION,
BUREAU OF ACCOUNTS,
Washington, July 1, 1927.

Mr. M. T. LANIGAN,
Auditor, Georgia and Florida Railroad,
Augusta, Georgia.

DEAR SIR: Referring to the two volumes left with me recently showing opening entries and balance sheet statements relative to the acquisition of property from the Georgia and Florida Railway under Finance Dockets Nos. 5812 and 5860:

It is noted that your company proposes to perpetuate the investment figures of the old Georgia and Florida Railway and receiver as of December 31, 1926, by charging to the investment account $18,020,396.96 for road and equipment. The commission's tentative final valuation of the property of the old Georgia and Florida Railway is contained in valuation docket No. 330. On page five of this docket you will observe that the tentative final value of this property as of June 30, 1918, based on 1914 prices, is computed in

the sum of $4,500,000, as compared with a recorded investment in road and equipment at the same time of $15,599,360.59. Since this valuation was made, the old Georgia and Florida Railway acquired the property of the Augusta Southern, the final value of which property as of June 30, 1916, in Valuation Docket No. 263, is computed by the commission in the sum of $900,000.

With the foregoing facts in mind this bureau does not approve of the perpetuation of the old investment figures in that the proposed charges to account 701, "Investment in road and equipment" would not represent the money cost of the properties acquired, as required by the commission's classifications. This condition is further emphasized by the fact that the predecessor carrier, as of August 31, 1926, had a deficit in corporate surplus of $9,318,320.01.

Under the circumstances this bureau will approve entries charging account 701 with the combined tentative final and final valuations of the old properties acquired by your company aggregating $5,400,000, plus the net of actual costs of all additions and betterments, less retirements made to the respective properties since valuation dates to December 31, 1926, inclusive. The difference between the total assets acquired (including road and equipment), less liabilities assumed, and the par value of the securities issued, should be accounted for appropriately in account 724, "Discount on capital stock," and 725, "Discount on funded debt." In this connection, see section 3, page 40, Classification of Income, Profit and Loss, and General Balance Sheet Accounts.

The foregoing accounting should cancel the proposed entry in account 776, "Accrued depreciation, equipment," crediting that account with $114,557.55. The proposed credit of $4,434,613.24 to account 751 "Capital stock," representing liability for 100,000 shares of no par value capital stock, should also be cancelled. This liability may be recorded in the nominal sum of $1.00 if so desired.

It is also noted that there is temporarily deposited with the New York Trust Company cash and securities aggregating $2,073,433.41, which sum is to be ultimately expended for the new Greenwood extension. These funds are classified in accounts 707, "Other investments," and 708 "Cash." It appears that the classification should be in account 711, "Special deposits."

There is set aside a sum of $100,000 for rebuilding freight cars. Please submit to this bureau as early as possible a comprehensive statement of the estimated amount necessary to rebuild the equipment acquired. See last paragraph, Account II, Equipment, page 33, Classification of Investment in Road and Equipment.

Will you please submit new entries based on the foregoing at your earliest convenience?

Yours, very truly,

(Signed.) ALEXANDER WELLE,
Director.

[Copy.]

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of petition of applicants filed June 1, 1926, in Finance Docket Nos. 5454, Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co. and 5470, application of Atlantic Coast Line Railroad Company for authority to acquire control of Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock and to assume certain obligations, the original of which is now on file and of record in the office of this commission.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 8th day of October, A. D. 1928.

[SEAL.] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

To the Honorable Interstate Commerce Commission:

Application of Francis R. Hart et al., as the reorganization committee on behalf of the Atlanta, Birmingham and Coast Railroad Company for authority to acquire and operate the Atlanta, Birmingham and Atlantic Railway and to issue securities.—Finance Docket No. 5454

Application of Atlantic Coast Line Railroad Company for authority to acquire control of the Atlanta, Birmingham and Coast Railroad Company by purchase of capital stock and to assume certain obligations.—Finance Docket No. 5470

Come now the applicants in the above-entitled proceedings, which have heretofore, by consent, been consolidated for purposes of hearing, and have been heard together, and respectfully petition the commission to grant a further hearing in these proceedings before final submission, as provided and authorized in Rule XV of the Rules of Practise before the commission, and in support of such petition respectfully show—

(1) On February 2, 1926, an "agreement" was executed by and between certain bondholders' committees, representing bondholders of the Atlanta, Birmingham and Atlantic Railway Company, and Atlantic Coast Line Railroad Company, whereby, subject to approval of this commission, it was agreed that said bondholders would bid for and endeavor to purchase, at foreclosure, the property of the Atlanta, Birmingham and Atlantic Railway Company, then and now in the hands of B. L. Bugg, receiver appointed by the District Court of the United States for the Northern District of Georgia, Northern Division, and in the event they acquired said property would apply for the incorporation of a company to be known as the Atlanta, Birmingham and Coast Railroad Company, and would

issue certain perferred and common stock, would sell said common stock to Atlantic Coast Line Railroad Company for the moneys therein specified, provided Atlantic Coast Line Railroad Company would agree to guarantee the preferred stock which would be retained by said bondholders in lieu of their bonds, by them surrendered in the purchase of said property.

(2) On April 9, 1926, pursuant to said agreement, Francis R. Hart et al., as the reorganization committee on behalf of the Atlanta, Birmingham and Coast Railroad Company, filed with this commission application for authority to acquire and operate said Atlanta, Birmingham and Atlantic Railway and to issue the securities in said application described. (Finance Docket 5454.)

On April 16, 1926, Atlantic Coast Line Railroad Company filed with this commission its petition for authority to acquire control of said Atlanta, Birmingham and Coast Railroad Company by purchase of its capital stock, and to assume certain obligations in said petition set forth. (Finance Docket 5470.)

(3) On April 30, 1926, the United States District Court for the Northern District of Georgia, Northern Division, held a hearing in the case of Birmingham Trust & Savings Company vs. Atlanta, Birmingham and Atlantic Railway Company, consolidated case in equity, No. 156, and the constituent causes in equity grouped therewith, and, after argument, entered its decree of foreclosure, directing a sale of the properties of the said Atlanta, Birmingham and Atlantic Railway Company by special master, duly appointed, upon the terms and conditions in said decree set forth. At said hearing on April 30, Mr. Charles E. Cotterill, attorney at law, 525 Grant Building, Atlanta, Georgia, appeared before said court and requested that he be permitted to address the said court in opposition to the signing of said decree, as representing a stockholders' protective committee, his appearance taking said form because his petition for leave to intervene had not, at said date, matured. Having been granted leave, said Mr. Cotterill presented to the court the objections of the said stockholders' protective committee to a foreclosure and sale of the property and urged upon the court reasons why said stockholders felt that if the sale were abandoned or postponed and the property retained in charge of a receiver, a more desirable reorganization might be effected. After argument, the court overruled the motion and delivered an opinion in which it recited the reasons why, in the opinion of the court, the postponement of the sale was improper and would jeopardize the opportunity then presented of paying about $300,000 of taxes and $3,000,000 of operating deficits, and some $10,000,000 of mortgage indebtedness, and that such an opportunity ought not to be jeopardized by delay at the suggestion of stockholders only. A copy of the decree of foreclosure and of the said opinion and order was filed in evidence at the hearing of these applications before the examiner for this commission,

held in Atlanta on May 20, hereinafter referred to, and appear in said record as Exhibits No. 1 and No. 2, respectively. Pursuant to the terms of said decree, the special master thereby appointed duly published notice of sale by said decree required, and fixed the date for such sale as June 16, 1926, at Atlanta, Georgia.

At said hearing, before the said District Court, on April 30, the court announced that it would, on May 14, hold a further hearing in said cause, at which time it would consider the fairness, timeliness, and equitableness of the plan of reorganization which was duly filed with said court, and of the offers made or to be made thereunder.

(4) On May 14, 1926, aforesaid, the said district court held a further hearing on the said plan and on the offers made or to be made thereunder, at which time all parties having complaint or objection were afforded opportunity to be heard. Certain complaints and petitions were made by certain bondholders, and the plan or reorganization was modified in some respects, particularly as to time within which bondholders not parties thereto might be allowed to deposit their bonds, subject to said plan. The said Mr. Cotterill did not appear at said hearing nor was there any other representative of a stockholders' protective committee present, nor was any objection to the approval of said plan filed by any such stockholders' protective committee. After hearing the argument, the district court aforesaid, entered an order approving said plan as modified therein, and, among other things, in section 6 thereof, adjudged that all parties to the said consolidated cause or any of the constituent causes, all creditors, bondholders and/or stockholders, as well as holders of claims against the said company or the receiver—

"Have had reasonable opportunity heretofore to make and present to the court their complaints and objections to the plan and said offers; and all persons, parties, firms, associations and/or corporations are forever barred from making any complaint or objection to the plan on said offers."

A copy of said order of May 15, aforesaid, was filed in evidence in the hearing on these applications, before the examiner for this commission, held in Atlanta on May 20, hereinafter referred to, and appears in said record as Exhibit No. 3.

(5) On May 20, 1926, the date fixed by this commission for the hearing upon the application on behalf of the said Atlanta, Birmingham and Coast Railroad Company, Finance Docket No. 5454, and on the application of Atlantic Coast Line Railroad Company, Finance Docket No. 5470, aforesaid, these proceedings came on for hearing before Examiner Davis at the Biltmore Hotel, Atlanta, Georgia, at ten o'clock a. m. Upon the call for appearances at the opening of said hearing the said Mr. Charles E. Cotterill, attorney, announced verbally that he appeared for certain stockholders of the Atlanta, Birmingham and Atlantic Railway Company, but did not

file any written petition for leave to intervene, nor did he furnish copies of any such petition for the parties present at said hearing, as by Rule II (1) of the Rules of Practice before the commission, required, nor did he, in announcing his appearance, state or set forth any grounds of intervention. During the course of the hearing he cross-examined witnesses introduced by the petitioners, parties to this proceeding, but did not introduce or present any witnesses on behalf of the stockholders or of any stockholders' committee. He did, however, introduce, by reference, under the provisions of amended Rule XIII (b) and (c) of the commission, certain statistical data on file with the commission, as set out in the transcript of record, on pages 133–4 and 138–141. Being questioned at this period by counsel for petitioners as to the identity of his clients and the parties he was representing, he stated to the examiner that he represented a stockholders' protective committee, then in process of formation and, as will appear from transcript of record (page 141) made a general statement of the position of his clients and of their purpose in appearing. An examination of said statement, which is the only notice parties to this proceeding have had of his purpose or of the grounds of his appearance (page 141–4 of the record) will show that he entered no objection to the purchase of the properties of the Atlanta, Birmingham and Atlantic Railway by the Atlanta, Birmingham and Coast Railroad Company, nor to the issuance of securities proposed, nor to the acquisition of control by Atlantic Coast Line Railroad Company through purchase of stock, nor to the assumption of obligations by Atlantic Coast Line Railroad Company, for which authority is sought in said applications, but indicated, on the contrary, that the objection of his clients was to a sale of the property at the price indicated by the plan, approved by the court, and at this time. At the close of said hearing he requested thirty days within which to file brief, and indicated his purpose to file exceptions to a tentative report of the examiner, with leave to brief the same, and indicated his purpose to ask for an oral argument on the matters pending before the commission, all of which matters and things will appear by reference to the transcript of record in this case, hereinbefore referred to.

In view of the foregoing facts, these petitioners respectfully assert and show to the commission—

(a) That the said stockholders' protective committee, referred to in the statement of Mr. Cotteriil, are not properly parties to this proceeding before the commission as intervenors for that they have not filed any petition for leave to intervene, either prior to or at the time the said proceedings were called for hearing, as by said Rule II (1) required.

(b) That so far as this record indicates, the purpose of said stockholders' protective committee in seeking a hearing and leave to file brief and argue this application, is to prevent a consummation of

the sale ordered by the said District Court, by withholding or postponing the requisite authority sought from this commission by the proposed purchasers and by your petitioner Atlantic Coast Line Railroad Company; that the rights of said stockholders to secure a delay in said sale have been considered and adjudged by the said District Court, and an order entered by that court, declaring that the present opportunity for a sale ought not to be jeopardized by delay at the suggesion of stockholders only.

Your petitioners, therefore, respectfully show that the position of said stockholders' committee, as indicated by this record, is to attack and retry the said judgment of said court, and your petitioners refer this commission to its decision in Finance Docket 1386, application of the Denver & Rio Grande where, in the report by the commission, it was held, upon facts substantially similar to those herein set forth—

"The judgment of a court of competent jurisdiction can not be made the subject of collateral attack before us in a proceeding of this character."

Your petitioners further show that since this petition was drafted, to wit, on Saturday, May 29, 1926, said District Court for the Northern District of Georgia, Northern Division, has granted a further hearing to the said Mr. C. E. Cotterill, upon an amended petition for intervention in said case, wherein it is set forth that said Mr. Cotterill represents W. A. Gunter, in his own behalf, and all others similarly situated, as holders of stock of the Atlanta, Birmingham & Atlantic Railway Company, that said amended petition for intervention before said District Court sets forth in detail the objections urged by said intervenors before said court, which said objections are in effect limited to a sale under the terms of the plan proposed, and at the time named by the court, for the reason that said intervenors believe that the receiver can successfully operate the property and eventually put it in position to bring a better price and terms; that the objections set forth in said petition presented to the court are substantially the same as the objections indicated in the aforesaid announcement by Mr. Cotterill before Examiner Davis; that after argument and consideration, the said District Court on Saturday, May 29, aforesaid, entered its opinion directing that an order be taken refusing the application of said petitioners to intervene, declaring that its former order of May 20, approving the plan, while administrative in character, represented the deliberate views of the court, deciding that the right of the Atlantic Coast Line Railroad Company to acquire control by the purchase of stock and to guarantee the obligations aforesaid, were dependent upon the decision of this commission, but holding that the right to direct a sale of the property at foreclosure was vested in said court, and thereupon affirming the prior decision of said court to have the sale, as in said decree of foreclosure provided. A certified copy of said opinion of the

court is attached to the original of this petition, and is prayed to be taken as a part thereof.

Your petitioners respectfully further represent to the commission that the consummation of the plan proposed, which, under the opinion of the District Court, protects the rights of all parties, will be jeopardized, if not prevented, by undue delay; that any purchaser under the provisions of the decree of foreclosure must agree to pay approximately $3,677,500.00 in cash, in addition to the upset price fixed by the court, inasmuch as the terms of the sale are predicated upon the assumption by the purchaser of all claims and expenses prior to the first mortgage (Atlanta & Birmingham) bonds, and the income bonds; that for this reason, it does not seem practicable to secure a sale and confirmation of the same by the court prior to the approval by this commission of the plan proposed, and of the acquisition and operation of the railroad and the assumption of the obligations for which authority is sought; that the delay entailed by the filing of report, exceptions to the report, briefing of exceptions and oral argument before the commission before final decision, in addition to the imposition of material loss upon the bondholders who have deposited their bonds under the terms of the plan (inasmuch as it will delay payment of interest to them for the period of such delay), may result in the failure of the entire plan, and prevent the consummation of the sale as decreed.

Your petitioners further represent to the commission that the transcript of the record in this case is short, being only 144 pages; that the sale under foreclosure, although fixed for June 16th, may be postponed by the special master from day to day or to a later day, and upon request of the trustees, plaintiffs in the foreclosure suit, will be postponed for such time as is requisite.

Your petitioners, therefore, respectfully pray that the commission will set these proceedings for oral argument before the commission, or before Division 4, upon the record in this case, as soon after the date of the filing of briefs as the commission may find expedient, and that the commission will thereupon take under consideration the application of the petitioners herein, and render its decision in such time as will enable the District Court of the United States for the Northern District of Georgia, to proceed with the foreclosure and disposition of this property, as in said decree set forth.

FRANCIS R. HART, ET AL.,
As the reorganization committee on behalf of the Atlantic, Birmingham and Coast Railroad Company.
By J. A. FOWLER, JR., *Counsel.*
ATLANTIC COAST LINE RAILROAD COMPANY,
By GEORGE B. ELLIOTT,
Vice President and General Counsel.

In the District Court of the United States for the Northern District of Georgia

BIRMINGHAM TRUST & SAVINGS CO.

vs.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY Company

Consolidated causes in equity No. 156

ATLANTA, GA., *May 29th, 1926.*

Application of W. A. Gunter for leave to intervene

The COURT: The stockholder, in his own behalf and in behalf of other stockholders, asks leave to become a party to this foreclosure suit and creditors' receivership in o[r]der to be heard touching a proposed sale of the railroad properties. The corporation itself is a party and has always been. It is unusual that stockholders are allowed to become parties to any suit conducted by the corporation, and extraordinary reasons are always required to be shown therefor.

Passing the question, however, as to whether stockholders in this case, on the allegations here made, should be permitted to intervene and become personal parties, I am unable to see that they could assert anything except what the corporation itself can assert and they do not charge that they are not in control of the corporation and able to have it do all that ought to be done in the premises. I am unable to agree with the contention that proceedings heretofore taken for sale of the road are ineffectual and illegal because of any provision of the transportation act. My understanding is that the part proposed to be taken by the Atlantic Coast Line Railroad Company in the reorganization is subject to the Interstate Commerce Commission's approval and that this railroad can not burden itself with any railroad, nor obtain control, by stockholding or otherwise, except with the approval of that commission. With the Coast Line's part in the matter this court has no concern and makes no adjudication. The only function of this court in considering the reorganization is to decide whether or not its terms are fair to the parties entitled to participate before this court in the proceeds of the sale, and whether or not any advantage is taken or likely to be taken of any who should have participation therein. On this point only is the court entitled to express an opinion, and has done so. Notwithstanding the rather sweeping language of the order taken, I am of opinion that in its nature the order is an administrative one and subject to the control of the court until the sale shall be finally confirmed. But it does express the opinion of the court upon the information now had by it, and may be considered to represent a fixed conclusion thereon, unless there arises, not then before the court, other information that would prove availing to change such opinion. I do not think the

unlikelihood of any person appearing to bid other than those contemplated by the reorganization cuts any legal figure. It simply means that the reorganization, or one like it, is the only possible way of getting a bidder. No one is excluded from making other reorganization plans or offering other bids, in cash or otherwise, for the consideration of the court. The stockholders themselves manifestly have no interest in or concern with the reorganization unless they should put forward some plan whereby the road may bring enough to satisfy its creditors and discharge creditors of the receivership and leave something for them to participate in. I do not think the possibility of aid by action of the Interstate Commerce Commission is a ground for a court to delay a sale after five years time has already been given its interested owner to find ways to handle and manage its property. The times are not hard. There is nothing in the circumstances that makes a sale likely to be less advantageous now than at any other time. The southeast, which is traversed and served by this road, is in a state of prosperity that could be paralleled only by that of war times. While it may continue and may increase, the court is not authorized to speculate on issues of this sort when the creditors are willing and desirous of selling now at a loss of about fifty per cent to themselves rather than risk it. I feel that the stockholders ought not to insist, even if delay were discretionary, unless they could propose a practical plan for satisfying accruing interest, discharging accruing taxes, guaranteeing against further loss in operation, and such matters of that sort. I realize that railroad property is peculiar and can not be sold just as other property might be, and that the court necessarily has a discretion about it, but I am firm in the opinion that the proceedings hitherto taken are both wise and necessary, and the last order considered, as I have just stated, itself requires no modification at the suggestion of stockholders. They would not appear to be possibly interested in the reorganization, because it contemplates a bid for the property much less than the indebtedness of the company.

Something has been said in the intervention touching the possible bias of the receiver. It is not a suit instituted and conducted by him. Even the sale is to be conducted by a commissioner of the court. In the main suit in which the receiver is appointed he represents nobody but the court, neither stockholders nor creditors. He is not even a party to the litigation unless specially made such. I do not think that anything touching his bias is of importance or material in considering this intervention.

In line with what has been said an order may be taken refusing the application to intervene in this case. Let this opinion be filed in the court. This 29th day of May, 1926.

SAML. H. SIBLEY, *U. S. Judge.*

(Filing.) Filed in clerk's office 29th day of May, 1926. O. C. Fuller, clerk, by J. D. Steward, deputy clerk.

United States of America, Northern District of Georgia:

I hereby certify that the above and foregoing is a true, full, correct, and complete copy of the original opinion of the court as the same remains of record and on file in the clerk's office of the District Court of the United States for the said district.

In testimony whereof I have hereunto set my hand and the seal of the said court at Atlanta, Ga., this the 29th day of May, A. D. 1926.

O. C. FULLER, *Clerk.*
By JON DEAN STEWARD, *Deputy Clerk.*

176 [Exhibit 1]

F-2540

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 5454[1]—Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co.

Submitted July 14, 1926. Decided October 26, 1926

1. Certificate issued authorizing a committee representing the bondholders of the Atlanta, Birmingham & Atlantic Railway Company and a new corporation, to be known as the Atlanta, Birmingham & Coast Railroad Company, to acquire and operate the line of the Atlanta, Birmingham & Atlantic Railway Company.
2. Applications of Atlanta, Birmingham & Coast Railroad Company for authority to issue capital stock, and of the Atlantic Coast Line Railroad Company for authority to acquire control of the Atlanta, Birmingham & Coast Railroad Company by purchase of its capital stock and to assume its obligations, considered, but action thereon deferred pending completion of the organization of the last-named company.

J. A. Fowler and S. E. Young for applicants.

George B. Elliott, Carl H. Davis, and R. C. Alston for Atlantic Coast Line Railroad Company.

Edgar Watkins and Harry T. Moore for Atlanta Freight Bureau. Charles E. Cotterill for stockholders' protective committee; and S. L. Yerkes, E. M. Cole, Fred Warde, Thomas A. Dixon, B. S. Parker, William H. Turner, P. F. Fitzgibbon, I. A. Davis, J. H. Mayes, H. H. Thornton, W. J. Bereen, Reuben Arnold, and John A. Hynds for various communities, commercial and business organizations, associations, and industries.

[1] This report also embraces Finance Docket No. 5470, Application of Atlantic Coast Line Railroad Company for authority to acquire control of Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock and to assume certain obligations.

Report of the commission—Division 4, Commissioners Meyer, Eastman, and Woodlock

By Division 4:

The application in Finance Docket No. 5454 was filed on April 9, 1926, by Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins, representing committees of bondholders of the Atlanta, Birmingham & Atlantic Railway Company, hereinafter referred to as the A., B. & A. The property of the A., B. & A. was conditionally sold on June 22, 1926, at foreclosure sale to George E. Roosevelt and J. A. Fowler, who, in turn, pursuant to a plan of reorganization approved by the court, will convey the property to a new company, to be known as the Atlanta, Birmingham & Coast railroad Company, hereinafter called the new company. Authority is sought for the acquisition and operation of the property and for the issuance of stock by the new company. By application filed on April 16, 1926, in Finance Docket No. 5470, the Atlantic Coast Line Railroad Company seeks authority to acquire control of the new company by purchase of its capital stock; also to assume certain obligations as to the payment of dividends and the redemption of stock.

Hearing was held upon both applications on May 20, 1926. Their approval is recommended by the Georgia Public Service Commission and the State Corporation Commission of Virginia. Many communications have been received from shippers and representatives of communities and organizations urging that the applications be granted. On the other hand, numerous other communications have been received from stockholders of the A., B. & A., protesting against the terms of the proposed reorganization, and some of these objectors were represented by counsel in the various proceedings. Briefs were filed and argument was heard on July 14, 1926.

The present A., B. & A. is the result of a reorganization of a previous company, known as the Atlanta, Birmingham & Atlantic Railroad Company, which took place in 1915. In financing the reorganized company, capital stock amounting to $30,000,000 was sold at a price of $12 per share of $100, realizing $3,600,000. A previous issue of 5 per cent bonds, known as Atlantic & Birmingham first-mortgage bonds, amounting to $4,000,000, was left undisturbed and, in addition, 5 per cent income bonds and scrip in the amount of $4,543,906.78 were issued to holders of receivers' certificates. All of these bonds are still outstanding in the hands of the public. Other bonds are pledged to secure loans, but under the plan the loans are to be paid and the pledges released. On suit of the Birmingham Trust & Savings Company, one of the general creditors, a receiver was appointed in 1921, and the trustees under the various mortgages later joined in the receivership proceedings, which are known as consolidated cause in equity No. 156, in the United States District Court for the Northern District of Georgia, northern divi-

sion. Committees representing the two principal classes of bondholders were organized in the same year, and a joint committee of four members, two from each of the bondholders' committees, was later appointed and is now acting as a reorganization committee, which has filed the application in No. 5454.

No interest has been paid on any of the outstanding bonds since 1922, and the amount of interest due on such bonds up to the date of the decree of foreclosure and sale, April 30, 1926, was $2,086,605.44. No dividends have been paid on the capital stock since its issue.

It was testified by a witness for the reorganization committee that numerous efforts had been made to dispose of the property or place it on a paying basis, but that all had been unsuccessful. Among these efforts are mentioned a proposal to secure aid from the State of Georgia; to dispose of the property of the Seaboard Air Line Railway Company; to the St. Louis-San Francisco Railway Company; and to various private interests. No definite or reliable offer could be secured. Plans for independent reorganization were also considered, in which some effort was made to secure the cooperation of stockholders. The committee was finally approached by representatives of the Atlantic Coast Line, who submitted a proposal, and after numerous conferences lasting several months, an agreement was reached on February 23, 1926, which is substantially the basis of the plan under consideration in this proceeding. The witness testified that the arrangement is the most advantageous that has been offered.

Under this plan, the two classes of outstanding bonds will be treated alike and will be exchanged for preferred stock of the new company at the ratio of $100 of bonds for $60 of stock. The stock is to be preferred as to cumulative dividends at the rate of 5 per cent per annum accruing from one year after title to the property shall vest in the new company, and as to assets, in the case of liquidation, at 100 per cent and accrued dividends; to be redeemable after January 31, 1955, as a whole, but not in part, at 103 and accrued dividends, and to have no voting power except in the case of continuing default in the payment of two semiannual dividends, in which case the preferred stock is to have exclusive voting power so long as any default shall continue. This will require an issue by the new company of $5,180,344.07, par value, of its preferred stock. In addition, the new company is to issue 150,000 shares of common stock without par value. This stock is to be acquired by the Atlantic Coast Line in consideration of the payment by that company of current outstanding obligations of the receiver, amounting to approximately $3,000,000, and, in addition, various expenses in connection with the foreclosure and reorganization, including compensation of counsel, bondholders' committees, revenue taxes, cost of printing and advertising, etc., the whole not to exceed $600,000. The amounts of these various items, some of which are to be fixed by the court, have not been determined. Their propriety

may receive further attention in our consideration of the proposed issues of securities. These obligations are to be met in cash or to be assumed if not due. By its guaranty of dividends on the preferred stock, the Atlantic Coast Line will secure itself against default and will insure retention of its control, through the voting rights of the no-par stock which it will hold.

The property was offered for sale under the court order at an upset price of $2,500,000. Roosevelt and Fowler were the only qualified bidders at the sale and the property was sold to them at their bid of $4,500,000, which, it is understood, is secured by deposit of bonds, and the purchasers are to be reimbursed by the Atlantic Coast Line for any expenditure of cash. Their bid was subject to the condition, first, that this commission shall, within a reasonable time to be fixed by the court, approve the applications before us, conferring authority "substantially sufficient to enable the parties thereto to carry out the plan and agreement of reorganization parties"; also upon the condition that should our approval be withheld, the bidders may at their option withdraw their bid and receive back their qualifying deposit.

The agreement was subject to the deposit of at least $7,000,000 of bonds before September 1, 1920. At the date of the hearing about 91 per cent of the bonds had been deposited under the agreement, and it was stated at the argument that the proportion had at that time been increased to about 96 per cent. Nonassenting bondholders are to receive their distributive share of the proceeds of the sale, in cash, and the shares of preferred stock which would otherwise have been issued for their bonds are to be delivered to the Atlantic Coast Line. The court reserved the right to fix the period for the deposit of bonds. So far as appears, there are no objecting bondholders.

As a practical statement of the situation it may be said that the Atlantic Coast Line is acquiring control of the A., B. & A. property by a cash payment of about $3,000,000 and the guaranty of an annual payment of about $260,000, in dividends. The bondholders are receiving 60 per cent of the face value of their bonds in 5 per cent guaranteed stock, but nothing for unpaid interest. The new company will have no present outstanding bonded indebtedness, although later issues of bonds are in contemplation.

No recognition is given the stockholders of the A., B. & A. in these plans. The contentions of the stockholders are based largely upon the fact that our valuation of the owned property of the A., B. & A. under section 19a of the act, as reported in 75 I. C. C. at page 645, shows a value of over $23,000,000 as of June 30, 1914, from which it is argued that the consideration to be given by the Atlantic Coast Line for control of the new company, and therefore of the property, is grossly inadequate. It is also strongly urged by the stockholders through their counsel that the earnings of the A., B. & A. are now increasing to such an extent as to justify a hope that

the company may be reorganized as an independent carrier, and that the execution of the present reorganization plan should be deferred to permit further test of the earning capacity of the property, as well as more complete investigation of the possibility of more advantageous disposition. Counsel also suggests that our authority has not been invoked to secure better divisions for the A., B. & A. from its connecting lines. In this connection the following statement of revenues, expenses, railway operating income, and net income for the 10 years ended December 31, 1925, is submitted:

Year ended	Operating revenues	Operating expenses	Net railway operating income [1]	Net income [1]
Dec. 31, 1916	$3,336,840	$2,555,181	$630,202	$286,899
Dec. 31, 1917	3,963,368	3,322,207	452,571	61,892
Dec. 31, 1918	4,703,301	3,938,452	594,761	155,447
Dec. 31, 1919	4,961,072	3,741,153	965,173	328,688
Dec. 31, 1920	5,829,867	3,930,060	1,519,598	787,309
Dec. 31, 1921	3,201,634	2,690,666	1,774,604	[2] 1,001,591
Dec. 31, 1922	4,017,229	3,237,154	490,597	695,070
Dec. 31, 1923	4,638,689	4,169,941	162,430	396,744
Dec. 31, 1924	4,819,482	4,380,111	107,719	[3] 844,801
Dec. 31, 1925	5,449,188	5,028,166	71,801	974,861

[1] Deficits in italic.
[2] Net income for 1920 was credited $1,383,493 for claim under section 209 of the transportation act, 1920.
[3] Revenues and expenses for 1921 were affected by a strike of railway employees.

Our principal concern is with the future of A., B. & A. property as a transportation facility. The A., B. & A. system had its origin in a group of short-line lumber roads in southern Georgia about 25 years ago. A line extending to tidewater at Brunswick, Ga., was acquired by the system in 1904, giving it a total mileage of about 338 miles. Lacking connections on the west, the traffic of the system was largely local, and about 1908 entrance was secured over constructed or leased tracks into Atlanta, Ga., and Birmingham, Ala., increasing the system to about 640 miles. Thereafter the A., B. & A. engaged in the handling of an important through traffic delivered or received at those points. The recital in the record gives the impression that the various extensions of the system were made to protect previous investments rather than in the development of a well-considered scheme of providing needed transportation facilities. As stated by witnesses, including the receiver, the inherent weakness of the A., B. & A. has been, and is, its lack of traffic. It was early in financial difficulties and went into the hands of a receiver in 1909 before it was completely in operation. This receivership continued until 1915. According to witnesses, the carrier has been largely dependent upon its connections for its traffic, but this condition appears to have been remedied to some extent during recent years, its annual reports since 1921 showing a greater tonnage originated than received from connections. The great development in Florida has been of material benefit, principally through its connection with the Atlantic Coast Line. Notwithstanding its de-

ficiencies in traffic, it serves a large territory exclusively and an exhibit was filed showing that it has 43 agency stations which are not served by any other railroad. It is said that 200,000 people are dependent solely upon the A., B. & A. for rail transportation. Its revenue from freight interchanged with the Atlantic Coast Line, on the south, and the affiliated lines of the Louisville & Nashville and Nashville, Chattanooga & St. Louis at Birmingham and Atlanta, on the north, for the year 1925, amounted to about $1,500,000 and it is represented that the withdrawal of any substantial portion of this business by connecting lines would be disastrous to the A., B. & A. Heretofore, however, its connections have been friendly. It has long been recognized that the lines of the A., B. & A. would be of particular value to the system of the Atlantic Coast Line in affording north-and-south connection between the lines of that system and those of its affiliated companies. In our consolidation plan, 63 I. C. C. 455, the lines of the A., B. & A. were grouped with those of the Atlantic Coast Line, the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis.

The objections of the stockholders were similarly urged before the court in the proceedings preceding the sale of the property and were dismissed in an opinion dated May 11, 1926, in which the court recited the history of the financial difficulties of the A., B. & A. and the efforts to relieve the situation, concluding as follows:

"I am satisfied that this road, however skillfully managed, can hardly sustain itself by its local traffic and can not secure enough through traffic to make it permanently profitable, surrounded as it is by strong systems controlling their own business. This has been shown by the entire history of the railroad, as well as by the experience of this last receivership. Nevertheless, in the hands of a strong system furnishing its traffic to it its profitableness could be greatly enhanced. The great activity of Florida and prosperity in South Georgia have been reflected in better earnings on this railroad through the past year, and these have brought forward a prospective purchaser. There are now about $300,000 of taxes and $3,000,000 of accumulated operating deficits, and some $10,000,000 of mortgage indebtedness, all claiming and entitled to payment. I think the opportunity for a sale ought not to be jeopardized by delay at the suggestion of stockholders only. Their manifest duty as against their creditors is to provide some tangible plan for satisfying the debts if they would continue to claim an interest in the corporate property. While railroad property is unique and has met a special protective solicitude from the courts, the fundamental fact can not be escaped that the rights of creditors are above those of stockholders, and the court can not refuse satisfaction to creditors because stockholders are threatened with loss."

There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line is in the public interest. The

sentiment in favor of the plan in the territory served by the A., B. & A. is apparently unanimous and earnest. Approval should therefore be given and the necessary authority issued, unless there be something in the terms and conditions of the proposed acquisition, or in the consideration, so inequitable as to require modification in the public interest. We find nothing of this character in the arrangement. It is true that there is wide disparity between the proposed price to be paid by the Atlantic Coast Line for its control of the property and the value of the property viewed as a basis for rate making, but our highest court has distinguished between value for rate-making purposes and exchange value. Galveston Electric Company *v.* Galveston, 258 U. S. 388. Our report upon the value of the A., B. & A., 75 I. C. C. 645, stated fully the grounds upon which the finding was based and afforded no reasonable ground for any modification of stock value, which, at that time, had receded almost to nothing. Whether or not the investment of the Atlantic Coast Line will be profitable can only be determined by experience; and even though that company, through contributions of traffic and by reason of other support, may be able to give the new company profitable returns from its operations, such a result would not indicate any inequity in the plan, either from the standpoint of the public or that of the stockholders. To meet the legitimate claims of bondholders and other creditors of the A., B. & A. and its receiver would require more than $14,000,000. To withhold our authority for the complete execution of the plan already partly carried into effect would injure the public and the creditors with no compensating benefits to anyone.

According to the record, the issuance of preferred stock without voting rights in exchange for bonds was not objected to by the bondholders, who at present have no voice in the affairs of the corporation. Their principal interest is not in the assets but in the returns upon their investment. It is stated that they could have received income bonds in lieu of preferred stock but preferred the latter on account of an advantage under tax laws. The issuance of no-par stock by the new company, through which the Atlantic Coast Line will exercise control, is represented as peculiarly appropriate in this case, it being impracticable to determine with reasonable accuracy the present value of the assets represented by the stock. The statement of the investment accounts of the new company has not received consideration by the applicants, but they indicate their willingness to submit to such reasonable restriction as we may prescribe. The Atlantic Coast Line does not now propose to lease the property or otherwise to operate it under its own organization, and the matter is not discussed in the record. There is a presumption that a combination of operations would result in substantial economies and greater efficiency, although the benefits would normally be less in the case of systems of such large mileage than where the separate organizations deal with smaller properties. We

do not feel justified in deferring action until the possibilities of combined operations can be more thoroughly investigated, but attention is called to the subject as one which should receive careful consideration from applicants who invoke the public interest in the support of their plans.

We find that the public convenience and necessity require the acquisition and operation of the lines of the A., B. & A. by the reorganization committee and the new company, and a certificate will be issued to that effect to take effect after 30 days. The new company has not been incorporated. We are advised by counsel for the applicants that incorporation under the laws of the State of Georgia is considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the new company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to assume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the new company, accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order. (Id. 185–188.)

EASTMAN, Chairman, dissenting:

In my judgment what is here proposed is a consolidation of two carriers "into a single system for ownership and operation" which we are without authority to approve under paragraph (2) of section 5. Any apparent difference between what is proposed and such a consolidation is as lacking in reality as an optical illusion. There is also involved an issue of stock without par value, and that I do not approve for reasons which I have stated in other cases and which need not be repeated here.

The price which in effect is being paid for the property is very low. While it is, perhaps, consistent with the record of earnings for the past six years since the end of Federal control, that record, I believe, affords a poor test of the inherent earning power of the property. Immediately after Federal control the company was plunged into a disastrous warfare with its employees, a warfare which not only depleted net earnings but must have engrossed the attention of the management to the exclusion of proper attention to efficient operation and the building up of business and revenues. My impression is strong that the management has not shown engery in seeking new sources of revenue, such, for example, as increased divisions from its connections. Furthermore within the past two years the trend of earnings has been sharply upward. In view of the rapid development of the South, the valuable terminal facilities which the Atlanta, Birmingham & Atlantic owns at certain points and its apparent strategic position with reference to the Atlantic Coast Line-Louisville & Nashville system, it seems to me that there is good reason for believing that it might with advantage have been

permitted to continue in the receiver's hands longer, concentrating attention on management and operation and fostering the upward trend of earnings. However, this is a question of judgment, and in view of the fact that the bondholders have agreed to the price, and the further fact that a very substantial increase would be necessary before the stockholders would benefit, no sufficient reason has been shown for general disapproval of the price as inconsistent with the publice interest.

One other matter, however, deserves comment. Part of the price which the Atlantic Coast Line is to pay for the property consists of an amount which may total $600,000, representing various expenses in connection with the foreclosure and reorganization. The record is barren of evidence as to the exact nature and amount of these expenses. All we are told is that they will not exceed $600,000, and that the major items will be compensation to the receiver and his counsel, compensation to counsel who filed the creditors' bills, compensation to Atlanta, Boston, and New York counsel in connection with three foreclosure bills, compensation to the two bondholders' committees, compensation to the reorganization committee, Federal issue taxes, cost of printing, special master's allowance, and cost of advertising. This does not include $12,000 per year throughout the receivership, which the receiver has already been paid. In my opinion this matter should not have been left on the record in this state of haze but should have been inquired into thoroughly. For this deficiency in the record I must, of course, assume my share of responsibility. The sum involved seems a tremendous sum, considering the character of the property, and experience has shown that in the case of such reorganizations there is no reason to presume that the expenditures will be reasonable. I refer to my discussion of this general subject in Missouri-Kansas-Texas Reorganization, 99 I. C. C. 330, 332–341. Nor is this a matter which can be adequately covered, as I see it, in any subsequent proceeding. It should have been dealt with here.

CERTIFICATE AND ORDER—*Issued October 26, 1926*

A hearing and investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require the acquisition and operation in interstate commerce by the reorganization committee, named and described in said report, and by the Atlanta, Birmingham & Coast Railroad Company, a corporation to be organized for the purpose of engaging in transportation subject to the interstate commerce act, of the railroad of the Atlanta, Birmingham & Atlantic Railway

Company, now operated by the receiver of said company, as described in said report and in the application in this proceeding.

It is ordered, That said reorganization committee and said Atlanta, Birmingham & Coast Railroad Company, when filing schedules establishing rates and fares on said railroad, shall in such schedules refer to this certificate and order by title, date, and docket number.

It is further ordered, That this certificate shall take affect and be in force from and after 30 days from the date it is issued. (Id. 190.)

By the commission, division 4.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

176A [Second Report]

F-2602

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 5454[1]—Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co.

Submitted December 8, 1926. Decided December 21, 1926

1. Authority granted the Atlanta, Birmingham & Coast Railroad Company to issue (a) $5,180,344.07 of preferred capital stock and (b) 150,000 shares of common stock without nominal or par value.
2. Authority granted the Atlantic Coast Line Railroad Company to acquire control of the Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock, and to assume obligation and liability, as guarantor, in respect of the preferred stock of said Atlanta, Birmingham & Coast Railroad Company.

J. A. Fowler and S. E. Young for applicants.

George B. Elliott, Carl H. Davis, and R. C. Alston for Atlantic Coast Line Railroad Company; Edgar Watkins and Harry T. Moore for Atlanta Freight Bureau; Charles E. Cotterill for stockholders' protective committee; and S. L. Yerkes, E. M. Cole, Fred Warde, Thomas A. Dixon, B. S. Parker, William H. Turner, P. F. Fitzgibbons, I. A. Davis, J. H. Mayes, H. H. Thornton, W. J. Bereen, Reuben Arnold, and John A. Hynds for various communities, commercial and business organizations, associations, and industries.

[1] This report also embraces Finance Docket No. 5470, Application of Atlantic Coast Line Railroad Company for Authority to Acquire Control of Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock and to assume certain obligations.

Supplemental report of the commission—Division 4, Commissioners Meyer, Eastman, and Woodlock

By Division 4:

In our original report and certificate in these proceedings, issued October 26, 1926,[2] we authorized a reorganization committee representing the bondholders of the Atlanta, Birmingham & Atlantic Railway Company, and the Atlanta, Birmingham & Coast Railroad Company, a corporation to be organized for the purpose of engaging in transportation subject to the interstate commerce act, to acquire and operate in interstate commerce the lines of railroad theretofore operated by the Atlanta, Birmingham & Atlantic Railway Company and its receiver. In the same applications authority was sought by the proposed new company to issue securities, and by the Atlantic Coast Line Railroad Company to acquire control of the new company by purchase of its capital stock and to assume obligation and liability with respect to such stock. In our report we said:

"The New Company has not been incorporated. We are advised by counsel for the applicants that incorporation under the laws of the State of Georgia is considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the New Company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to assume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the New Company, accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order."

The Atlanta, Birmingham & Coast Railroad Company was incorporated under the laws of Georgia on November 22, 1926, and by supplemental application filed November 26, 1926, it adopts and renews the previous application for authority to issue securities. A duly certified copy of its charter accompanied the supplemental application. These securities are to consist of preferred capital stock in the amount of $5,180,344.07, to be issued in exchange for bonds of the predecessor company, as described in the original report. This stock is to be entitled to cash dividends at the rate of 5 per cent per annum, payable in semiannual installments on January 1 and July 1 of each year, said dividends to be cumulative and to accrue from January 1, 1928. The stock is redeemable at the option of the issuing company in whole, but not in part, on any semiannual dividend date after January 1, 1935, at 103 and accrued dividends. Three months' notice of redemption must be given. Upon the winding up or dissolution of the corporation, the holders of the preferred

[2] See 117 I. C. C. 181.

stock are to receive par value of the stock and accrued dividends before recognition of common stock. No additional preferred stock or stock having prior rights can be issued without the consent of the holders of three-fourths of the preferred stock outstanding.

Authority is also sought to issue 150,000 shares of common stock without nominal or par value. This stock is to be issued to the Atlantic Coast Line Railroad Company in consideration of advances in cash by that company to meet certain outstanding obligations of the receiver and various expenses in connection with the foreclosure and reorganization of the old company, estimated to amount to about $3,677,500. The common stock is to have exclusive voting power, except in case of default in the dividend payments on the preferred stock for two successive dividend dates. In such case the preferred stock is to have exclusive voting power so long as the default shall continue.

On December 8, 1926, the Atlantic Coast Line Railroad Company filed a supplemental application, renewing its request for authority to acquire control of the Atlanta, Birmingham & Coast Railroad Company by purchase of its common stock to be issued as above stated and to assume obligation and liability in respect of the preferred stock. This assumption is to be evidenced by indorsement on each certificate substantially in the following form:

"For value received, Atlantic Coast Line Railroad Company hereby guarantees to the registered holders from time to time of the shares of preferred stock of Atlanta, Birmingham & Coast Railroad Company (hereinafter called said company) represented by the within stock certificate the due and punctual payment to such registered holders, upon each July 1 and January 1 beginning on July 1, 1928 (except that in the case of preferred stock issued after January 1, 1928, such payments shall be cumulative and accrue only from the date on which such stock shall have been issued) of an amount equal to 2½% of the par value of such shares, and also guarantees to such registered holders that, in the event of any liquidation, dissolution or winding up, voluntary or involuntary, of said company or in the event of any merger or consolidation of said company or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of said company, while any of said preferred stock is outstanding, such registered holders shall receive, at or prior to the happening of such event, payment of the redemption price of $103 in cash for each of such shares together with a sum equal to 5% per annum of the par value of such shares from January 1, 1928, to the date fixed for redemption less the aggregate amount of all cash dividends theretofore paid thereon. This guaranty is absolute and unconditional. This guaranty is made under and subject to the provisions of a guaranty agreement dated as of ———, 1926, made between Atlantic Coast Line Railroad Company and the Chase National Bank of the City of New York, as trustee, to which ref-

erence is hereby made for the rights of the holders of the within certificate in respect of this guaranty and to all the terms of which such holders by acceptance hereof assent."

A draft of the proposed agreement was filed with the supplemental application.

The circumstances leading to the proposed issuance of securities and assumption of obligation and liability are fully discussed in our original report and repetition is unnecessary. As mentioned in our previous report, question has been raised regarding the propriety of certain proposed expenditures in connection with this reorganization, to be assumed by the Atlantic Coast Line Railroad Company in part consideration for the stock it will receive. There has now been filed for the record a sworn statement of the items of expenditure in question, aggregating about $614,000 in amount. The major portion consists of attorney's fees, receiver's compensation, etc., fixed by the court. As to the remainder, we do not feel warranted in delaying action pending investigation of their propriety and reasonableness. The obligations of the new company, as a whole, are moderate. Reorganizations of railway companies, necessitated by excessive burdens of fixed charges or lack of earning power and involving heavy losses to security holders, should not be made the opportunity for exploitation. As an aid in protecting the public interest, we shall require that full information regarding the expenses of reorganization be made a part of the public records of such proceedings. The applications will be granted, subject, however, to the condition that the Atlanta, Birmingham & Coast Railroad Company, in setting up its investment account, shall not include therein any amount in excess of the par value of the preferred capital stock authorized to be issued and the amount actually received in consideration of the issuance of its no-par common stock. Subject to this condition, we find that the proposed issuance of securities and assumption of obligation and liability (a) are for lawful objects within the corporate purposes of the Atlanta, Birmingham & Coast Railroad Company and the Atlantic Coast Line Railroad Company, respectively, and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by said companies of service to the public as common carriers, and which will not impair their ability to perform that service, and (b) are reasonably necessary and appropriate for such purposes.

We also find that the proposed acquisition of control by the Atlantic Coast Line Railroad Company of the Atlanta, Birmingham & Coast Railroad Company by purchase of its capital stock, under the circumstances described herein, is in the public interest and that the consideration, terms, and conditions are just and reasonable; but our authorization will be conditioned upon the retention of the stock by the controlling company until our further order. An appropriate order will be entered.

Chairman EASTMAN dissents.

Order—Entered December 21, 1926

A hearing and investigation of the matters and things involved in these proceedings having been had, and said division having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered that the Atlanta, Birmingham & Coast Railroad Company be, and it is hereby, authorized to issue not exceeding $5,180,344.07 of its preferred capital stock and not exceeding 150,000 shares of its common capital stock without nominal or par value; said preferred and common stock to be used for the purposes specified in the application recorded under Finance Docket No. 5454 and in the report aforesaid: Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, "Cost of road purchased," the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.

It is further ordered that, except as herein authorized, said stock shall not be sold, pledged, repledged, or otherwise disposed of by the applicant, unless and until so ordered by this commission.

It is further ordered that the applicant shall report concerning the matters involved in the application recorded under Finance Docket No. 5454 in accordance with the commission's order dated July 22, 1924, respecting applications filed under section 20a of the interstate commerce act.

It is further ordered that nothing herein shall be construed to imply any guaranty or obligation as to said stock or dividends thereon on the part of the United States.

It is further ordered that the Atlantic Coast Line Railroad Company be, and it is hereby, authorized to assume obligation and liability in respect of said preferred stock of the Atlanta, Birmingham & Coast Railroad Company, by indorsing on each certificate of said stock its unconditional guaranty, in form and substance substantially as set forth in the aforesaid supplemental application recorded under Finance Docket No. 5470 and in the report.

And it is further ordered that the acquisition by the Atlantic Coast Line Railroad Company of control of the Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock, as described in the applications recorded under Finance Docket No. 5470 and in the report aforesaid be, and it is hereby, approved and authorized: Provided, however, and this authorization is given upon the express condition, that said Atlantic Coast Line Railroad Company shall

not dispose of said stock unless and until authorized so to do by this commission.

By the commission, division 4.

[SEAL.] GEORGE B. McGINTY,
Secretary.

177 INTERSTATE COMMERCE COMMISSION
WASHINGTON

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of statement of petitioner, Atlanta, Birmingham & Coast Railroad Company, in connection with its supplemental petition for a construction of the order of this commission entered December 21, 1926, filed March 22, 1928, in Finance Docket No. 5454, reorganization and control of Atlanta, Birmingham & Atlantic Ry. Co., the original of which is now on file and of record in the office of this commission.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 17th day of August, A. D. 1928.

[SEAL.] GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

Before the Interstate Commerce Commission. Finance Docket No. 5454. Reorganization and control of Atlanta, Birmingham & Atlantic Railway Company

Statement of petitioner, Atlanta, Birmingham & Coast Railroad Company, in connection with its supplemental petition for a construction of the order of this commission entered December 21, 1926

Facts from the record:

In addition to the recitals of fact set up in the supplemental petition, this petitioner (Atlanta, Birmingham & Coast Railroad Company) respectfully calls to attention of the commission, the following brief synopsis of the history of this transaction:

I. Negotiations leading to acquisition of Atlanta, Birmingham & Coast Railroad Company

When the bondholders' committee of the insolvent Atlanta, Birmingham & Atlantic Railway Company sought to sell that property to Atlantic Coast Line Railroad Company, the latter company specifically refused to purchase the property itself, but agreed that if the bondholders would form a new company and cause it to acquire the property and franchises of the Atlanta, Birmingham &

Atlantic Railway Company the Atlantic Coast Line Railroad would purchase, subject to the approval by the Interstate Commerce Commission, all of the voting common capital stock of such new company, thereby acquiring control thereof. The terms of this arrangement were specifically set out on the agreement of February 23, 1926, which appears in the record, Finance Docket No. 5454, as Exhibit 5.

II. Application of bondholders to Interstate Commerce Commission

Pursuant to the foregoing arrangement, Francis R. Hart, G. E. Warren, Geo. E. Roosevelt, and James H. Perkins, as the reorganization committee, filed with this commission their application for authority to acquire and operate the property and franchises of the insolvent Atlanta, Birmingham & Atlantic Railway Company under the provisions of paragraph 18 of section 1 of the act, and also for authority to issue the preferred and common stock contemplated for such new company under the provisions of paragraph 2 of section 20a of the act.

The regulations of the commission governing the filing and contents of applications for certificates of this character (commission's order of July 22, 1924, as amended) provides that said applications shall set up, among other things, "nature of the application and the purposes and uses of the proposed issue and the proceeds thereof." The bondholders, in filing their application in response to the above quoted requirements, stated:

"Fifth: The purposes and uses of the proposed issue of capital stock are *to acquire the lines of railroad and other properties of the Old Company* and its receiver, as aforesaid, and to carry out the plan." (Italics ours.)

The commission was thus notified at the outset that authority was sought for the New Company to acquire the properties of the Atlanta, Birmingham & Atlantic Railway Company and to pay for the same by the issue of its preferred and common capital stock. The plan aforesaid and the application were approved by the United States District Court.

III. First report and order of the commission

On October 26, 1926, the commission handed down its first report and order approving and authorizing the acquisition by the bondholders of the property and franchises of the Atlanta, Birmingham & Atlantic Railway Company, but, inasmuch as the bondholders were not incorporated, and, under the Georgia law, could not acquire a charter until after the special master had conveyed the property, the commission deferred further action as to authorizing the issuance of the capital stock under the provisions of section 20a.

IV. Charter of Atlanta, Birmingham & Coast Railroad Company

Armed with the above approval, the bondholders applied to the State of Georgia for a charter, which was duly granted. The application for a charter substantially set out the facts recited above. In authorizing the issuance of the preferred and common stock the charter specifically provided that—

"authority is hereby conferred for the issue of all or any of said fifty-two thousand shares of preferred and/or said one hundred and fifty thousand shares of common stock *for the purpose of acquiring and paying for the property and assets described in article first hereof* (property of the Atlanta, Birmingham & Atlantic Railway Company) and for the purpose of carrying out the above-mentioned plan and agreement of reorganization dated February 23, 1926." (Italics ours.)

V. Organization of New Company (Atlanta, Birmingham & Coast Railroad Company)

Upon the issuance of this charter the Atlanta, Birmingham & Coast Railroad Company, the new company organized, and thereupon filed a supplemental application in Finance Docket No. 5454, attaching thereto a copy of said charter and asking that it be substituted as applicant for the bondholders' committee that filed the original application.

VI. Second report and order of the commission

On December 21, 1926, this commission issued its second report and order and authorized the Atlanta, Birmingham & Coast Railroad Company to issue the preferred and common stock for the purposes and uses set out in the application. As noted above, those purposes and uses were for the acquisition of the property of the Atlanta, Birmingham & Atlantic Railway Company. The said second report, in granting the authority aforesaid, stated:

"*The application will be granted*, subject, however, to the condition that the Atlanta, Birmingham & Coast Railroad Company, in setting up its investment account, shall not include therein any amount in excess of the par value of the preferred capital stock authorized to be issued and the amount actually received in consideration of the issuance of its nopar common stock." (Italics ours.)

The order issued under the provisions of this report, brought forward the above condition in the following language:

"Provided, however, and authority to issue said stock is granted upon the express condition that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the

accounts, be reckoned on a basis not in excess of its par values; *and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.*" (Italics ours.)

The issue now submitted to this commission is the construction of this condition. The authority conferred by the order was accepted by the Atlanta, Birmingtam & Coast Railroad Company, subject to the condition recited, taking the said condition to mean what the language thereof stated. Acting upon this authority, the Atlanta, Birmingham & Coast Railroad Company and the bondholders' committee entered into—

VII. Agreement of sale

The Atlantic Coast Line Railroad Company was not a party to this agreement. The agreement undertook to set out the consideration and the terms under which the committee of bondholders, then holding title to the property of the Atlanta, Birmingham & Atlantic Railway Company, were to convey the same to the Atlanta, Birmingham & Coast Railroad Company. Under these terms the preferred stock was to be issued and delivered to the bondholders' committee by the Atlanta, Birmingham & Coast Railroad Company. The common stock was to be issued upon order of the bondholders' committee and thereafter, upon compliance by the Atlantic Coast Line Railroad Company, with certain agreements, to be delivered for the bondholders' committee to the Atlantic Coast Line Railroad Company.

VIII. The settlement

Pursuant to the terms of the agreement of sale and carrying out the provisions of the agreement of February 23, 1926, the parties met across the table. The preferred stock was issued and delivered to the bondholders' committee. The common stock was issued upon order of the bondholders' committee and held, pending discharge of obligations assumed by the Atlantic Coast Line Railroad Company, and the Atlantic Coast Line Railroad Company thereupon paid the several amounts it had agreed to pay in the agreement of February 23, 1926. None of this money was paid to the Atlanta, Birmingham & Coast Railroad Company. Not one penny of said amount was received by the Atlanta, Birmingham & Coast Railroad Company. On the contrary, the money was paid to the creditors of the old Atlanta, Birmingham & Atlantic Railway Company, named in the agreement of February 23, 1926, aforesaid, as follows:

1. Taxes.
2. Indebtedness for material and supplies. These amounts were paid to the receiver of the Atlanta, Birmingham & Atlantic Railway Company.
3. Birmingham Trust & Savings Bank loan. This amount was paid to the owner of the note.

4. National Bank of Commerce loan; paid to the owner of the note.

5. United States Government matured note.

6. United States Government unmatured note.

7. United States Government unmatured equipment notes. These amounts were paid to the Treasury Department of the United States.

8. Unmatured notes for rebuilding equipment. These notes were assumed by the Atlantic Coast Line Railroad Company, to be paid at maturity.

9. Receivership, reorganization, and miscellaneous expenses. These amounts were paid to the bondholders' committee of the Atlanta, Birmingham & Atlantic Railway Company.

IX. Résumé of foregoing facts

From the foregoing recital it appears that this commission gave authority to the Atlanta, Birmingham & Coast to issue 150,000 shares of no par-value common stock, upon condition that "the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

The Atlanta, Birmingham & Coast accepted this condition, issued its preferred and common stock for the purpose set out in its application to this commission, and authorized in its charter, to wit, as consideration for the lines of railroad and other properties of the Atlanta, Birmingham & Atlantic Railway Company. These properties were conveyed under the terms of the agreement of sale by deed from the purchasing committee of the bondholders in consideration of and in exchange for the entire issue of capital stock, preferred and common. Pursuant to said provisions, the preferred stock was issued direct to the bondholders' committee, and upon order of that committee the common stock was issued and, after the making by Atlantic Coast Line of certain payments to creditors of the Old Company, was, on behalf of the bondholders' committee, delivered to the Atlantic Coast Line.

Before setting up the accounts of the new company the record and facts were submitted to Haskins & Sells, certified public accountants, of New York, and said accountants were requested to study the same and to set up a balance sheet for the New Company to begin business as of January 1, 1927. Haskins & Sells made their report and submitted a balance sheet with their recommendation that it be adopted for the purpose aforesaid. In this balance sheet Haskins & Sells in arriving at the assets adopted as the present investment the value found by this commission in Valuation Docket No. 1, valuation of Atlanta, Birmingham & Atlantic Railway Co., as of valuation date, plus additions and betterments, less retirements, from said valuation date to January 1, 1927. On the liability side they set up the preferred stock at par, in accordance with the terms of the condition imposed, and, in like manner, they set up the com-

mon stock at the amount of the assets, less the preferred stock and other liabilities.

When this tentative balance sheet was submitted to the Bureau of Accounts of the Interstate Commerce Commission, Director Wylie wrote the Atlanta, Birmingham & Coast that it was disapproved and directed that the value of the 150,000 shares of common stock should be set up at $4,080,699.80 as the sum of money paid by Atlantic Coast Line Railroad Company to or upon the order of the bondholders' committee in purchasing the said stock.

Argument

The question now is the construction of the condition imposed by the commission in granting authority to the Atlanta, Birmingham & Coast to issue said common stock.

The authority was granted to the Atlanta, Birmingham & Coast Railroad Company upon its application. The application stated that the stock was to be issued in exchange for the property of the Atlanta, Birmingham & Atlantic Railway Co. As a matter of fact, the stock was issued in exchange for that property. The question is, therefore, the construction of the language "that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

The familiar rule for construction of statutes or orders of legislative effect is thus stated in the Encyclopedia of Law:

"In order to ascertain the legislative intention the primary rule is that a statute is to receive that meaning which the ordinary reading of its language warrants. Words not technical being taken in their ordinary familiar acceptation, with regard to their general and popular use, and the meaning thus arrived at must be adopted when it involves no absurdity."

This rule is of such frequent application and so well known that citation of authority seems unnecessary. In the present case the language is not technical and the meaning should be taken as that which the ordinary reading of the language warrants.

In Thornley vs. U. S., 113 U. S. 310, 28 L. ed. 999, the court states the rule as follows:

"Where the meaning of the statute is plain, it is the duty of the courts to enforce it according to its obvious terms. In such a case there is no necessity for construction."

In Board of Lake County Commissioners vs. Rollins, 130 U. S. 662, 32 L. ed. 1060–1063, the court says: "So, also, where law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction," citing cases.

And the commission has frequently applied this rule to its orders, etc.

In Charles Boldt vs. P. C. C. & St. L. Ry. Co., 42 I. C. C. 308–310, it is stated:

"While it may have been the intention of defendants to apply the tariff in its restricted sense, tariffs are to be construed according to their language and the intention of the framers is not controlling."

In Flanley Grain Company vs. Director General, 89 I. C. C. 33–36, there was involved the construction of a certain reconsignment tariff and the defendant contended that the term "disposition orders" used therein had a special meaning in traffic parlance and implied delivery only to points within the switching limits. The commission said:

"This contention is not persuasive. The words of a tariff should be construed in their ordinary sense, and where the meaning, so construed, is clear it must govern."

In the present case, applying these rules, there is no room for construction. The order stated in terms that the cash value of the common stock was to be set up on a basis not in excess of the amount received therefor. The actual consideration for the common stock is, therefore, the property of the Old Company expressed in cash as of the date of its receipt.

The text of account No. 41, "cost of road purchased," provides that the account shall include the cash cost of any road and that "where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis." Also, this petitioner realized that this commission has held that the value of the property, as shown upon the books of accounts of carriers, should, in the opinion of the commission, represent the "reasonable and necessary investment." In the O'Fallon case, this commission said:

"Value rests upon a number of elements. The value of the property of railroads for rate-making purposes, which is construed to be the value of property devoted to common-carrier purposes upon which common carriers are entitled under the law to earn a fair return, approaches more nearly the reasonable and necessary investment in the property than the cost of reproducing it at a particular time. In those cases, of which there are many and of which the present case is an example, where it is impossible to ascertain and analyze the actual investment, resort must be had to the application, to complete property inventories, of unit prices derived from actual costs paid by carriers over a considerable period of years when railroad construction was being carried on extensively.

* * * * * * *

"The method which we therefore find logical and proper for determining the value in the subsequent recapture periods is to add to or subtract from the 1919 value the net increases or decreases in the investment in property devoted to transportation service as determined from the carrier's returns to valuation order No. 3, with due regard to the element of depreciation."

It appears, therefore, that this petitioner, in determining the then cash value of the property representing the investment necessarily and reasonably made, has taken the figures found by this commission on valuation date and, in accordance with the method prescribed, has added thereto additions and betterments, less retirements. It has been noted that the value thus found is based upon the value fixed by the commission for rate-making purposes, but since a value for rate-making purposes includes only property which on valuation date was actually in use in the service of the public as a common carrier, it is obviously and admittedly a value which is lower than the possible value of all the assets of the corporation, since it admittedly does not include assets not at that time in service of the public. It is, therefore, respectfully submitted that according to the views and decisions of this commission the figure adopted by Haskins & Sells for the purpose of recording the investment in road and equipment in the balance sheet recommended to this company is fairly and reasonably determined and, according to the rules of this commission, fairly represents the amount that should be set up on the books of this company for that purpose.

This being the case, this petitioner respectfully asserts that it has fully and completely complied with the terms of the condition imposed by the commission in granting the authority aforesaid and that it is beyond the power of the Bureau of Accounts to substitute another and different meaning and to require of this carrier a set-up on its books which does not represent the actual facts. It is admitted and conceded that this commission is given authority by Congress to direct the method of accounting on the part of carriers subject to its jurisdiction. It is not admitted that this commission is given authority and power to direct a reporting carrier in recording its accounts to set up figures not in accord with facts.

It is further respectfully submitted that in issuing the instructions aforesaid, the Bureau of Accounts has confused the amount received by the Atlanta, Birmingham & Coast for its common capital stock with the amount received by the bondholders when they sold the stock to Atlantic Coast Line Railroad Company.

The argument of the bureau that the sale value of this stock represented its market price and therefore represented the value of the property theretofore received by Atlanta, Birmingham & Coast Railroad Company is futile and can not logically be applied unless the accounts of the carriers recording investment in road and equipment are to be changed daily or at least monthly, so as to make their accounts coincide with the market value of the stocks as quoted on the Stock Exchange in New York. It seems to us that this is a reductio ad absurdam.

That the result that would be brought about by adopting the bureau's recommendation would lead to absurdities and great injustice can be illustrated in several ways.

Actual investment figures of the Atlanta, Birmingham & Atlantic, predecessor of this company, representing the property now owned by this company, are in excess of $24,000,000, the value fixed by the commission for rate-making purposes and adopted by this petitioner in setting up its tentative balance sheet. If the instructions of the Bureau of Accounts are adopted, the figure representing the investment in road and equipment will be reduced to approximately $10,000,000, or approximately two-fifths of the recorded investment of the Old Company. Assuming, for purposes of illustration, that the petitioner owns a station building valued at $25,000 and insured for $25,000, said building, on the new set-up of accounts, would be reduced in value to $10,000 on the books of petitioner. Suppose that the building is destroyed by fire and petitioner collects $25,000 insurance. Petitioner will then be in position of having collected $15,000 more than its books show the building to be worth. It is difficult to see where the $15,000, representing the actual value of property destroyed, could be thereafter entered upon its books. If the effect of the order would be to prevent the carrier from collecting more than $10,000, the value arbitrarily fixed by the bureau's order, its effect would be to deprive this petitioner of property without due process of law and obviously unenforceable.

Petitioner gives below, for purposes of illustration, a tentative work-up of the balance sheet as it would appear under the direction of the Bureau of Accounts:

ASSETS

Investment in road and equipment	$7,080,873.79
Miscellaneous physical property	1,262,970.00
Investment in affiliated companies	197,180.00
Other investments	1,100.00
Current assets	1,502,832.67
Deferred assets	2,758.00
Unadjusted debits	177,918.21
	10,225,632.67

LIABILITIES

Capital stock, common	$5,180,300.00	
Preferred stock	4,080,699.80	
		9,260,999.80
Funded debt		322,500.00
Current liabilities		574,683.70
Deferred liabilities		3,702.11
Unadjusted credits		63,747.06
		10,225,632.67

It seems absurd to set up on the books of this company as the reasonable and necessary investment seven millions of dollars against property which this commission has solemnly declared to be worth more than twenty-nine millions. It seems equally absurd to consider setting up a depreciation account against equipment appraised by

this commission at figures which, with additions and betterments less retirements, produce a present book value of approximately $4,000,000 on a basis which would apparently approximate, when scaled down as recommended by the bureau, approximately $1,500,000.

No precedent is involved

It was suggested, in discussing this matter before division 4, that to adopt the recommendation of Haskins & Sells might establish a precedent which would bear improperly upon other cases pending before this commission. It is respectfully submitted that no new precedent would be established, for that in the case of the reorganization (after foreclosure) of the Georgia & Florida Railroad the Bureau of Accounts has taken exactly the position which Haskins & Sells has recommended in their tentative balance sheet. A copy of a letter from Director Wylie to Mr. M. T. Lanigan, auditor of the Georgia & Florida Railroad, attached to this petition, specifically states that—

"under the circumstances this bureau will approve entries charging Account 701 with the combined tentative and final valuation of the old properties acquired by your company aggregating $5,400,000, plus the net of actual costs of all additions and betterments less retirements made to the respective properties since valuation date to December 31, 1926, inclusive."

This is exactly the recommendation of Haskins & Sells in the instant case. It is difficult for this petitioner to understand why the rule applied to the Georgia & Florida upon reorganization is not applicable also to the Atlanta, Birmingham & Atlantic, upon similar reorganization. There is no essential difference in fact involved.

We respectfully ask that the commission authorize this company to apply said rule, approved as to the Georgia & Florida, and to adopt the balance sheet in conformity therewith, as recommended by Haskins & Sells.

Respectfully submitted.

ATLANTA, BIRMINGHAM & COAST RAILROAD CO.,
By GEO. B. ELLIOTT, *Advisory Counsel.*

178 INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of transcript of the stenographer's notes of the oral argument held July 14, 1926, at Washington, D. C., before the commission (division 4), in Finance Docket Nos. 5454, Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co. and 5470, application of Atlantic Coast Line Railroad Company for authority to acquire control of Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock and to assume certain obligations, the

original of which is now on file and of record in the office of this commission.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 17th day of August, A. D. 1928.

[SEAL.] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

179 Commissioner WOODLOCK. I asked Mr. Fowler at what you proposed to state the capital account of the new property represented by 150,000 shares of non-par stock.

Mr. ELLIOTT. Do you have in mind, stated on the books of the Atlanta, Bimingham & Coast, or the Coast Line?

Commissioner WOODLOCK. The new company.

Mr. ELLIOTT. Ithink it would be stated at what the road and equipment account of the A., B. & A. Railway is stated.

Commissioner EASTMAN. That is not the present rule. The present rule is that it shall be stated on the balance sheet at the market value of the securities returned to the property at the time they were passed over.

Mr. ELLIOTT. I believe the commission has under consideration the adjustment of its accounts. Wherever it is to be set up, it will be set up so that you can see what was paid for it and what the original cost was.

Commissioner EASTMAN. That is one suggestion. We have the question under consideration: that is true.

Mr. ELLIOTT. I understand that you have the question under consideration now, and, of course, whatever the commission's decision is we will have to meet it. I take it as a fact that if the commission finds that the road and equipment account should be so
180 many millions of dollars, the change of ownership of the common stock in the property would not change your figure. I rather think that when you reach the final conclusion there will be a record by which the original cost of the property, if obtainable, will be carried forward on the books. If not, you will use the basis you have been using in the past for such purposes.

Commissioner EASTMAN. How do you arrive at the number of these shares?

Mr. ELLIOTT. In a sense it was expediency. I do not know that any definite or specific calculation has been made. It seems to us relatively a fair proportion. In a sense it was just the proportions between the non-par stock, whatever that stock is, and then the number of shares represent the equity in the property after the $5,200,000 preferred is protected; and if it is only $3,670,000 that is to be paid in cash, it would have a value of about $24 a share. If the earnings of the property be increased so that it would go up, so that its going concern value comes nearer to its reproduction value that you have found, the value of the stock will go up and

it will be shown on the balance sheet without the empirical adjustment that it is worth $100 a share.

Commissioner EASTMAN. How will the Coast Line carry it on its books?

Mr. ELLIOTT. At what they paid for it.

Commissioner EASTMAN. What would that be?

181 Mr. ELLIOTT. That would be cash of $3,670,000—it will run over that, because interest is accruing all the time—the cash that is required to take up the non-assenting bonds. It would be set up at the cost price on the books.

Commissioner EASTMAN. How do you arrive at that $3,000,000?

Mr. ELLIOTT. The $3,000,000 is taxes to December 31, 1925, $375,000,000; materials and supplies, and preferred liens which have been allowed by the court, $745,000; Birmingham Trust & Savings Bank loan, $114,000; National Bank of Commerce loan, $351,000; United States Government unmatured loan, $100,000; United States Government unmatured equipment note, $650,000; miscellaneous expenses, $600,000. Those items make a total of $3,677,500. Interest is running on all of those items all the time.

Commissioner EASTMAN. You pay off the Government debt in full?

Mr. ELLIOTT. The Coast Line does that.

Commissioner EASTMAN. Was there any agreement with the other bondholders that the Coast Line will do that?

Mr. ELLIOTT. You see, there were bonds under the first refunding mortgage which went up as collateral for that debt. By acquiring that debt we acquired all that collateral. Therefore if the road is sold we will be in position to go and surrender those bonds and clear the record on that.

182 *Certificate of notification to the Interstate Commerce Commission of securities sold, pledged, repledged, or otherwise disposed of, required by paragraph (5) of section 20A of the Interstate Commerce act, including obligations of the carrier authenticated or issued by trustees or others.*

ATLANTA, GA., *Jan. 10, 1927.*

The undersigned hereby certifies that within the 10 days next preceeding the above date the Atlanta, Birmingham and Coast Railroad Company has disposed of the securities set forth and described below:

1. Description of securities:
   (A) Preferred capital stock, par value $5,180,300.00.
   (B) Common capital stock without nominal or par value, 150,000 shares.
2. Date of application for authority with respect to the securities: April 8, 1926, supplemental November 26, 1926.
3. Interstate Commerce Commission's finance docket number assigned to application for authority: 5454.
4. Date of the commission's order authorizing the disposition of the securities: December 21, 1926.

5. Date of prior certificate of notification (if any) in which the securities are set forth and described: None.
6. Disposition of the securities:
   (A) Authenticated by trustee—
      (1) Date of authentication: January 4, 1927.
      (2) Date of delivery to carrier: January 4, 1927.
      (3) Par value or principal amount—
         (a) Preferred capital stock, par value $5,180,300.00.
         (b) Common capital stock, 150,000 shares.
   (B) Sold—
      (1) Date sold: January 4, 1927.
      (2) Par value or principal amount: Tentative value, $4,080,699.80.
      (3) Name of purchaser: Atlantic Coast Line Railroad Company.
      (4) Purpose for which sold—

Common capital stock, without nominal or par value, 150,000 shares issued to the Atlantic Coast Line Railroad Company in accordance with plan and agreement of reorganization for the payment by the Atlantic Coast Line Railroad Company of the following obligations:

All equipment trust notes, matured and unmatured, issued under equipment trust No. 3, dated January 15, 1920, by the Director General of Railroads, the Atlanta, Birmingham & Atlantic Railway Company and the Guaranty Trust Company, New York, as trustee—

Par value	$816,982.65	
Interest at 6% Jan. 15 to Dec. 31, 1926	46,976.49	
		$863,959.14
Note of the A., B. & A. Ry. Co. dated Dec. 20, 1920, payable to the order of the Birmingham Trust & Savings Co	90,000.00	
Interest due thereon	31,395.00	
		121,395.00
Note of B. L. Bugg, receiver of the A., B. & A. Ry. Co., dated March 29, 1926, payable to the order of the Atlantic Coast Line Railroad Company	235,311.96	
Interest due thereon	8,823.19	
		244,135.15
Cash advance Jan. 4, 1927, by the Atlantic Coast Line Railroad Co. to B. L. Bugg, receiver, to apply on payment of obligations of the receiver in accordance with plan and agreement of reorganization		1,323,410.88
Purchase by the Atlantic Coast Line Railroad Company of $405,000.00 par value first and refunding mortgage bonds of the Atlanta, Birmingham & Atlantic Railway Company dated November 1, 1915, which were held by the National Bank of Commerce, New York, as collateral on note for $275,000.00 which bonds were reduced to posses-		

sion on failure to meet payment of note, November 29, 1922	$364,325.93	
Interest at 6% Feb. 18 to Dec. 31, 1926	18,884.22	
		$383,210.15
Receivership, reorganization and miscellaneous expenses and allowances		600,000.00
To pay equipment obligations of the receiver applying to 300 box cars, 257 coal cars and 100 flat cars	519,500.00	
Interest accrued to Dec. 31, 1926	25,089.48	
		544,589.48
		4,080,699.80

NOTE.—These figures are approximate and may be amended or supplemented.

(5) Conditions and terms of sale: In accordance with plans and agreement of reorganization.

(C) Pledged or repledged (stating which)—

(1) Date pledged or repledged: None.

(2) Par value of principal amount: None.

(3) Name of pledge: None.

(4) Purpose of pledge: None.

(5) Conditions and terms of pledge: None.

(D) Otherwise disposed of—

(1) Date disposed of: January 4, 1927.

(2) Par value of principal amount: $5,180,300.00.

(3) To whom disposition was made: To Geo. E. Roosevelt and deposited with American Exchange Irving Trust Company for account of reorganization committee.

(4) Manner and purpose of disposition: Preferred capital stock, par value $5,180,300.00 issued to retire first mortgage gold bonds of the Atlantic & Birmingham Railway Company dated January 1, 1904, par value $4,090,000.00 and income mortgage bonds of the Atlanta, Birmingham & Atlantic Ry. Co., dated November 1, 1915, par value outstanding $4,543,906.78, as provided for in the plan and agreement of reorganization.

(5) Conditions and terms of disposition: As provided in plan and agreement of reorganization.

I, the undersigned, B. L. Bugg, president of the Atlanta, Birmingham and Coast Railroad Company on my oath do say that the annexed return has been prepared under my direction: That I have carefully examined same and declare the same to be a complete and correct statement of the facts set forth therein, to the best of my knowledge, information, and belief.

ATLANTA, GA.

B. L. BUGG, *President.*

Subscribed and sworn to before me this 15th day of January, 1927.

[SEAL.] A. B. GILBERT,

Notary Public, State of Georgia at Large.

My commission expires March 12, 1929.

CLASSIFICATION

OF

INCOME, PROFIT AND LOSS, AND GENERAL BALANCE SHEET ACCOUNTS

FOR

STEAM ROADS

PRESCRIBED BY THE

INTERSTATE COMMERCE COMMISSION

IN ACCORDANCE WITH SECTION 20 OF THE
ACT TO REGULATE COMMERCE

ISSUE OF 1914

Effective on July 1, 1914

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

THE INTERSTATE COMMERCE COMMISSION.

JAMES S. HARLAN, *of Illinois.*
JUDSON C. CLEMENTS, *of Georgia.*
EDGAR E. CLARK, *of Iowa.*
CHARLES C. MCCHORD, *of Kentucky.*
BALTHASAR H. MEYER, *of Wisconsin.*
HENRY C. HALL, *of Colorado.*
WINTHROP M. DANIELS, *of New Jersey.*

GEORGE B. MCGINTY, *Secretary.*

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ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 19th day of May, A. D. 1914.

The subject of a Uniform System of Accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

It is ordered, That the Classification of Income, Profit and Loss, and General Balance Sheet Accounts, with the text pertaining thereto, embodied in printed form to be hereafter known as Issue of 1914, a copy of which is now before this Commission, be, and the same is hereby, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Division of Carriers' Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said classification, with the text pertaining thereto be, and is hereby, prescribed for the use of carriers by rail (exclusive of electric railways) subject to the provisions of the Act to Regulate Commerce as amended, in the keeping and recording of their said accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all said accounts in conformity therewith; and that a copy of the said issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That in order to avoid destroying the basis of comparison with previous years, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said issue becomes effective, keep and maintain, in addition to the said accounts hereby prescribed, such portion or portions of its present income, profit and loss, and general balance sheet accounts as may be deemed desirable by any such carrier or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

It is further ordered, That, unless otherwise ordered, any such carrier or any receiver or operating trustee of any such carrier may

keep any temporary or experimental income, profit and loss, and general balance-sheet accounts the purpose of which shall be to develop the efficiency of operations: *Provided, however*, That such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed.

It is further ordered, That July 1, 1914, be, and is hereby, fixed as the date on which the said issue of the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads shall become effective.

By the Commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

INTRODUCTORY LETTER.

INTERSTATE COMMERCE COMMISSION,
DIVISION OF CARRIERS' ACCOUNTS,
Washington, May 19, 1914.

TO ACCOUNTING OFFICERS OF STEAM RAILWAYS:

This Classification of Income, Profit and Loss, and General Balance Sheet Accounts supersedes the Form of Income and Profit and Loss Statement for Steam Roads, First Issue, effective July 1, 1912, and the Form of General Balance Sheet Statement, First Revised Issue, effective Jun. 15, 1910. It also supersedes conflicting instructions in Accounting Bulletin No. 8.

In Income all of the revenues from operating physical property the cost of which is includible in the accounts for investment in road and equipment have been combined in one account, and correspondingly the expenses of operation have been combined. Separate accounts have been provided for the revenues from and the expenses of operating miscellaneous physical property. A distinct account has been provided in which to include such revenue from operations as has been determined to be uncollectible during the period for which the accounts are stated. Distinct accounts have been provided for rent from and rent for the several classes of equipment.

In Profit and Loss an account has been provided in which to show the amount of revenue overcharges which are determined to be unrefundable during the period for which the accounts are stated. An account is also provided for donations from individuals and companies for the construction or acquisition of property or for compensating the carrier for loss anticipated during the early period of operation.

Balance-sheet asset accounts have been provided for "Improvements on leased railway property," and "Deposits in lieu of mortgaged property sold." Additional accounts have been provided in which to include demand deposits and time drafts and deposits, items which heretofore have been included as cash. The account "Taxes paid in advance" has been eliminated and provision made for showing in red the net amount of taxes paid over the amount of taxes accrued in an account under the caption of "Tax liability." A liability account has been provided for "Grants in aid of construction," and separate accounts have been provided for accrued

depreciation upon road, upon equipment, and upon miscellaneous physical property.

In the preparation of the text of the accounts and in the grouping of the accounts in the form of general balance sheet it has been primarily the purpose to provide for showing, in the group of accounts under the caption "Current assets," only items of available assets or of assets which there is a reasonable assurance will become available within a year from the date of the balance sheet.

The general and special instructions contain a comprehensive statement of the principles underlying the classification, indicating generally the application of the accounting rules. The attention of accounting officers is called to the importance of requiring all employees who are assigned to accounting work in connection with income, profit and loss, and general balance-sheet accounts to familiarize themselves thoroughly with these instructions.

In the preparation of the revision of the accounting rules contained in this and other classifications for steam roads, which are concurrently issued, the Commission has had the cooperation of the Association of American Railway Accounting Officers, and its Standing Committee on Corporate, Fiscal, and General Accounts.

The classification, in tentative form, has been presented for criticism and suggestions to the chief accounting officer of each railway and to the railway commissions of the several States. All suggestions received from such parties have been given careful consideration, and many of them have been incorporated in the classification as here issued.

FRED W. SWEney,
Chief Examiner of Accounts.

GENERAL INSTRUCTIONS.

The carrier's records shall be kept with sufficient particularity to show fully the facts pertaining to all entries made in the accounts provided herein for Income, Profit and Loss, and General Balance Sheet. Where the full information is not recorded in the general books, the entries therein shall be supported by other records in which the full details shall be shown. Such general book entries shall contain sufficient reference to the detail records to permit ready identification, and the detail records shall be filed in such manner as to be readily accessible for examination by representatives of the Interstate Commerce Commission.

1. When the title and definition of an income, profit and loss, or general balance-sheet account clearly indicate that it is a summary of other accounts, it is not required that a special ledger account shall be kept under such a title to include the balances from the accounts usually kept in the ledger, but in such case the titles of the subaccounts in the ledger shall give references by numbers, titles, or both, to the income, profit and loss, or general balance-sheet account prescribed herein of which they are subdivisions.

2. When the compensation for the use of equipment held under lease includes both rent and maintenance (repairs and depreciation), the lessor shall determine the proportion of gross rent applicable respectively to rent, repairs, and depreciation. The lessor shall credit the portion covering rent to the appropriate rent account in Income, the portion covering repairs to the account originally charged or chargeable with the cost of the repairs, and the portion covering depreciation to the accrued depreciation account for equipment. The lessee shall correspondingly charge the portion covering rent to the appropriate rent account in Income, the portion covering repairs to the appropriate equipment repair account, and the portion covering depreciation to the appropriate equipment depreciation account in Operating Expenses.

When the compensation for the use of equipment held under lease covers only rent and depreciation (the lessee being responsible for the current repairs) the lessor shall determine the proportion of the gross rent applicable to rent and that applicable to depreciation. The lessor shall credit the portion covering rent to the appropriate rent account in Income, and the portion covering depreciation to the accrued depreciation account for equipment. The lessee shall charge the portion covering rent to the appropriate rent account in Income, and the portion covering depreciation to the appropriate depreciation account in Operating Expenses.

When the lease provides that the lessee shall be responsible for the maintenance of the leased equipment, the lessee shall charge the estimated current

depreciation to the appropriate depreciation account in Operating Expenses, and concurrently credit the amounts thus charged to balance-sheet account No. 778, "Other unadjusted credits." To this latter account shall be charged, to the extent of the credits therein with respect to the equipment, the cost of restoring the depreciation upon the equipment, or the payments made to the lessor for the purpose of compensating for the loss through depreciation at the time the equipment is surrendered.

When the accounting in connection with equipment held under lease requires, under this rule, an apportionment of the compensation as between rent and maintenance, the lessor shall show the distribution of the charges upon its bills, and such distribution shall be adhered to by the lessee.

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SPECIAL INSTRUCTIONS.

1. INCOME ACCOUNTS DEFINED.—Income accounts are those designed to show, as nearly as practicable, for each fiscal period, the total amount of money that a carrier becomes entitled to receive for services rendered, the returns accruing upon investments, the accrued costs paid or payable for the services rendered by it, the losses sustained by it, the amounts accrued for taxes, for use of moneys and for use of properties of others, and the appropriations made from income during the period. The net balance of income (or loss) shall be carried to Profit and Loss.

2. DEFERRED ITEMS.—When no provisions have been made through entries in the accounts of this classification for anticipating delayed items chargeable or creditable to Income, and the amount of any such item is relatively so large that its inclusion in the accounts for a single year would seriously distort those accounts, the carrier, if so authorized upon application to the Interstate Commerce Commission, shall distribute to Profit and Loss so much of the amount as may be authorized. The carrier, in its application to the Commission, shall file the full particulars concerning such item and the reasons which in its judgment indicate the propriety of such accounting.

Delayed items are items representing transactions which occurred before the current year.

3. UNCOLLECTIBLE REVENUE.—An account is provided for revenue charges against individuals and companies which during the period for which the Income Account is stated have been determined to be uncollectible. This account is provided for the purpose of eliminating from the ledger assets of the carrier, or of writing down to nominal amounts in its asset accounts, items of revenue charges which can not be collected, such as freight charges for which credit has been allowed, or undercharges discovered after the freight has been delivered.

TEXT PERTAINING TO THE INCOME ACCOUNT

I. CREDITS

501. RAILWAY OPERATING REVENUES.

This account shall include the total revenues derived from operations as shown in the accounts provided in the classification of operating revenues.

502. REVENUES FROM MISCELLANEOUS OPERATIONS.

This account shall include the total revenues derived from the operation of miscellaneous operating physical property, such as that the cost of which is includible in balance sheet account No. 731, "Miscellaneous physical property."

Note.—The losses from miscellaneous operations of physical property shall be carried in account No. 511, "Miscellaneous rents—Net physical property."

503. HIRE OF FREIGHT CARS—CREDIT BALANCE.

This account shall include the net credit balance of (1) amounts receivable on account of the use of freight cars owned by companies operating [illegible] and (2) amounts receivable on account of the use of freight cars of other companies, leased, controlled, and for the use of which [illegible] and [illegible] and [illegible] the use of freight cars [illegible] shall be included in account No. 512, "Rents from locomotives."

504. RENTS FROM LOCOMOTIVES.

This account shall include amounts receivable [illegible] the use of the accounting company's locomotives [illegible] or [illegible]

[illegible] shall be included in account No. 513, "Rents from [illegible]"

507. RENT FROM WORK EQUIPMENT.

This account shall include amounts receivable accrued as rent for the use of the accounting company's work equipment leased or interchanged.

NOTE A.—Rent for work equipment included in lease of road to another company shall be included in account No. 500, "Income from lease of road."

NOTE B.—A fair rent for work equipment used in construction work-train service shall be credited to this account. (See general instructions for the classification of investment in road and equipment, section 4 a.)

508. JOINT FACILITY RENT INCOME.

This account shall include amounts receivable accrued for rent of tracks, yards, terminals, and other facilities owned or controlled by the accounting company and used jointly with other companies or individuals.

Amounts receivable from other companies in reimbursement for taxes on property jointly used shall be credited to this account.

NOTE.—The portion of the cost of maintenance, operation, or administration of joint facilities recoverable from others shall be credited to the various joint facility accounts provided for operating expenses. When the compensation for the use of joint facilities is a fixed amount or is based upon a charge per passenger, ton, car, or other unit, it shall be fairly apportioned by the creditor between this account and the appropriate joint facility operating expense accounts.

509. INCOME FROM LEASED ROAD.

This account shall include the entire amount receivable accrued for the exclusive use of road, tracks, or bridges (including equipment or other railway property covered by the contract) owned or controlled by the accounting company, whether payable to the accounting company in cash or disbursed by the lessee on behalf of the accounting company as interest on funded debt, guaranteed dividends on stock, or otherwise.

When the lessor company maintains the road and equipment leased, the cost of maintaining the property rented shall be charged to this account, except that when the rent thus receivable for the use of property other than equipment is relatively small and the expense of maintenance is not separable, the entire amount received may be credited to revenue account No. 142, "Rents of buildings and other property."

If, under the terms of a lease, the deficit or any portion of it, resulting from the lessee company's operations of the property leased is payable by the lessor company, the amount thus payable shall be charged to this account by the lessor.

NOTE A.—When taxes on leased property are assumed by the lessee, the accruals of such taxes shall be included in the lessee's account No. 532, "Railway tax accruals."

NOTE B.—If property the rent of which is chargeable to account No. 542, "Rent for leased roads," is leased by the accounting company, the rent receivable therefor shall be credited to this account.

510. MISCELLANEOUS RENT INCOME.

This account shall include rents of property owned and controlled by the accounting carrier of the kind provided for in the foregoing [illegible]

[illegible] shall be charged the cost of maintenance of the property rented, [illegible] expenses in connection with such property, [illegible] the date or subsequent termination of tenancy [illegible] ground rents, taxes paid corporations, assessments, and charges [illegible]

NOTE A.—If property the rent of which is [illegible] and controlled [illegible] accounts provided for the corresponding [illegible] rents receivable therefor shall be credited to this account.

NOTE B.—Rents on property [illegible] rent is [illegible] to [illegible] and be charged to [illegible] and [illegible] rent account.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Form B.—If, under the terms of a lease, the rental or any portion of it resulting from the lessee's operation of the property leased is payable by the lessee company, the amount shall be charged to account No. 503, "Income from lease of road," by the lessor and credited to this account by the lessee.

Form C.—If property, the rent of which is chargeable to this account, is leased by the accounting company to affiliate, the rent upon the subject shall be credited to account No. 508, "Income from lease of road."

Form D.—Payments for the exclusive use of road and equipment constructed by the lessee and used in the accounting company's operations (when considerable in amount and when not provided for in the classification of operating expenses) shall be credited into this account. Any depreciation on the leased property shall be charged into the corresponding account and thus offset. Depreciation not thus offset, applicable to the investment in the property, shall be charged to this account.

502. MISCELLANEOUS RENTS.

This account shall include rents payable accrued on property held by the accounting company under lease or other agreement and not properly chargeable to any of the foregoing accounts.

Form A.—This account shall not include rents provided for in the operating expense accounts.

Form B.—If property, the rent of which is chargeable to this account, is leased by the accounting company to affiliate, the rent upon the subject shall be credited to account No. 508, "Income from lease of road."

Form C.—Payments for the exclusive use of miscellaneous property constructed by the lessee and used in the accounting company's service (when considerable in amount and when not provided for in the classification of operating expenses) shall be credited into this account. Any depreciation on the corresponding property constructed by the lessee and used in the accounting company's service shall be offset into this account, and the other corresponding rent (amount applicable to the investment in the property) shall be charged to this account. The net remainder of the credits into this account, after the deduction of the corresponding rent charges, shall be carried to account No. 503, "Income from lease of road."

504. MISCELLANEOUS TAX ACCRUALS.

This account shall include the amounts accrued during the year for taxes which are assessed against the accounting company and are not chargeable to any other account.

Form A.—Taxes assessed against property held by the accounting company under lease or other agreement shall not be charged to this account.

Form B.—Taxes assessed against property owned by the accounting company but used by others under lease or other agreement shall be charged to this account.

505. INTEREST ON FUNDED DEBT.

This account shall include the current accruals of interest on all classes of debt, the principal of which is chargeable to balance sheet account No. 618, "Funded debt unmatured," or No. 621, "Nonnegotiable debt to affiliated

companies"; also interest accrued on debentures stock and on receiver's certificates issued for a term of more than one year. This account shall be kept in such form that the interest on debenture stock, on receivers' certificates, and on other classes of funded debt shall be shown separately in the Annual report to the Commission.

NOTE A.—This account shall not include charges for interest on funded debt obligations issued or assumed by the corporation, but paid by it, during the period of collateral or lease to the company, or other person, or which remain unpaid.

NOTE B.—When funded debt is issued for less than its par value, the discount and additional expense incurred in connection with the issue, or the proportion thereof applicable to the period covered by the report, shall be charged to this account. Premium realized on issues of funded debt shall be credited to this account, and the proportion of the premium applicable to the period covered by the report shall be charged to account [illegible].

247. INTEREST ON UNFUNDED DEBT.

This account shall include interest accrued during the year on all unfunded debt, except interest on current loans from banks and others, which shall be charged to account [illegible]. Interest on receivers' certificates issued for a term of one year or less, interest on [illegible] and other unfunded debt shall be charged to this account. Premium realized on short-term notes issued [illegible] shall be credited to this account, and the proportion of the premium applicable to the period covered by the report shall be charged to account [illegible].

248. AMORTIZATION OF DISCOUNT ON FUNDED DEBT.

This account shall be charged during each fiscal year with the proportion of the discount and expense of funded debt which is applicable to that period. The charges to this account shall be made in such manner that at the date of maturity of each issue of funded debt the entire discount and expense of issuing such debt shall have been charged off. The charges to this account shall be made in such manner that the charges for any one year shall not be affected by the fact that a portion of the funded debt was issued during the year, but the charges shall be based upon the entire amount of the issue. The charges to this account shall be made in such manner that the charges for any one year shall not be affected by the fact that a portion of the funded debt was issued during the year, but the charges shall be based upon the entire amount of the issue.

249. MAINTENANCE OF INVESTMENT ORGANIZATION.

This account shall include the [illegible] and all administration expenses of the [illegible] in connection with the investments in bonds of [illegible] and other securities.

Dividend disbursing [illegible]
Printing and mailing dividend checks.
Publishing and mailing annual reports and other corporate statements to shareholders.

Publishing notice of declaration of dividends.
Law expenses.
Office expenses.
Salaries of officers, clerks, and attendants.
Stationery and printing.

NOTE.—Organization and administration expenses incident to railway operation are provided for in operating expense general account 731, General.

550. INCOME TRANSFERRED TO OTHER COMPANIES.

This account shall include the whole or any portion of the income of the accounting company payable to another company under the terms of agreements or contracts without obligation for reimbursement.

In determining the amount payable by the accounting company, consideration shall be given not only to operating revenues and operating expenses, but also to other items of income or deduction which affect that amount.

NOTE A.—The amount receivable by the other company shall be credited by it to account No. 512, "Separately operated properties—Profit."

NOTE B.—Dividends or other payments upon securities issued or assumed by the accounting company shall not be included in this account.

551. MISCELLANEOUS INCOME CHARGES.

This account shall include all items in the nature of fixed charges properly chargeable to Income Account for a fiscal period not provided for elsewhere, such as "normal" and "additional" income tax upon the interest on accounting company's funded debt when assumed by it.

552. INCOME APPLIED TO SINKING AND OTHER RESERVE FUNDS.

This account shall include amounts applied to sinking and other reserve funds from income, whether definite appropriations from income, allotments or payments of definite amounts from income under the terms of mortgages, deeds of trust, or other contracts that provide for such allotments or payments, or accretions representing interest or other returns accrued on the contents of such funds and required to be retained therein.

NOTE A.—The amounts charged to this account shall be concurrently credited to balance sheet accounts Nos. 772, 781, 782, and 783, as may be appropriate.

NOTE B.—Similar appropriations made from surplus shall be charged to profit and loss account No. 613, "Surplus applied to sinking and other reserve funds."

553. DIVIDEND APPROPRIATIONS OF INCOME.

This account shall include amounts definitely declared payable from the income of the fiscal period, as dividends on actually outstanding capital stock issued or assumed by the accounting company, other than debenture stock. (See definition of the several classes of capital stock in balance sheet account No. 751, "Capital stock.") If a dividend is not payable in cash the consideration shall be described in the entry with sufficient particularity to identify it.

This account shall be subdivided so as to show separately the dividends on the various subclasses of capital stock.

NOTE A.—Interest accrued on debenture stock shall be charged to account No. 546, "Interest on funded debt."

NOTE B.—This account shall not include charges for dividends on capital stock issued or assumed by the accounting company and owned by it, whether pledged as collateral, or held in its treasury, in special deposits, or in sinking or other reserve funds. (See account No. 552, "Income applied to sinking and other reserve funds.")

NOTE C.—This account shall be used when the appropriations are definitely made chargeable to income. Similar appropriations made from surplus shall be charged to profit and loss account No. 614, "Dividend appropriations of surplus."

504. INCOME APPROPRIATED FOR INVESTMENT IN PERSONAL PROPERTY.

This account shall include amounts definitely appropriated from income to be applied for the construction or acquisition of new lines and extensions of additions to and betterments of property the cost of which is chargeable to road and equipment accounts or applied for the construction or acquisition of property the cost of which is includible in balance-sheet account No. 705, "Miscellaneous physical property."

Records of the accounting carrier shall be so kept that the appropriations charged to this account for any fiscal period may be distinguished as relating to (a) amounts expended during preceding fiscal periods, (b) amounts expended during the current fiscal period, and (c) amounts held in reserve.

The records shall also show separately appropriations for investment in road and equipment and for investment in miscellaneous physical property.

Note A.—Similar appropriations made from surplus shall be charged to profit and loss account No. 615, "Surplus appropriated for investment in physical property."

Note B.—The amounts charged to this account shall be concurrently credited in balance-sheet account No. 708, "Additions to property through income and surplus," by No. 782, "Miscellaneous fund reserves," or by No. 783, "Appropriated surplus not specifically invested," as may be appropriate.

505. STOCK DISCOUNT RELINQUISHED THROUGH INCOME.

This account shall include amounts definitely appropriated from income to reduce or extinguish the amount of discount on capital stock issued by the accounting company. (See balance-sheet account No. 724, "Discount on capital stock.")

Note.—Similar appropriations made from surplus shall be charged to profit and loss account No. 615, "Stock discount extinguished through surplus."

506. MISCELLANEOUS APPROPRIATIONS OF INCOME.

Except as provided in account No. 502, "Income applied to sinking and other reserve funds," this account shall include amounts definitely appropriated from income for the ultimate repayment of the principal (less the discount, if any, allowed at the time of sale) of any indebtedness incurred in the acquisition or improvement of property carried in the road and equipment accounts; also amounts definitely appropriated to provide a reserve for doubtful accounts; and for other purposes not provided for elsewhere.

Note.—Similar appropriations made from surplus shall be charged to profit and loss account No. 615, "Miscellaneous appropriations of surplus."

56. INCOME APPROPRIATED FOR INVESTMENT IN FIXTURES, ETC.

This account shall include amounts definitely appropriated from income to be applied for the construction or acquisition of new trucks and extensions and of additions to and betterments of property the cost of which is chargeable to road and equipment accounts or applied for the construction or acquisition of property the cost of which is includible in balance-sheet account No. 705, "Miscellaneous physical property."

Records of the amounts credited hereto so as to show what the appropriations cover and the amounts charged to this account for any fiscal period may be distinguished as relating to (a) amounts expended during preceding fiscal periods, (b) amounts expended during the current fiscal period, and (c) amounts held in reserve.

The records shall also show separately appropriations for betterment to road and equipment and for betterment to miscellaneous physical property.

NOTE A.—Similar appropriations made from surplus shall be credited to profit and loss account No. 615, "Surplus appropriated for investment in physical property."

NOTE B.—The amounts charged to this account shall be concurrently credited to balance-sheet account No. 778, "Additions to property through income and surplus" in No. 779, "Miscellaneous fund reserves" in No. 780, "Appropriated surplus not specifically invested," as may be appropriate.

57. STOCK DISCOUNT, EXTINGUISHED THROUGH INCOME.

This account shall include amounts definitely appropriated from income to reduce or extinguish the amount of discount on capital stock issued by the accounting company. (See balance-sheet account No. 774, "Discount on capital stock.")

NOTE.—Similar appropriations made from surplus shall be charged to profit and loss account No. 615, "Stock discount extinguished through surplus."

58. MISCELLANEOUS APPROPRIATIONS OF INCOME.

Except as provided in account No. 56, "Income applied to additions and other reserve funds," this account shall include amounts definitely appropriated from income for the purpose of the periodical transfer thereto, if any, authorized at the time of sale) of any profit thereafter incurred in the acquisition or improvement of property carried in the road and equipment accounts; also amounts similarly appropriated to provide or reserve for dividends, bonds, and for other purposes not provided for elsewhere.

NOTE.—Similar appropriations made from surplus shall be charged to profit and loss account No. 615, "Miscellaneous appropriations of surplus."

FORM OF INCOME STATEMENT

EXPLANATORY NOTE.—The following form of income statement is designed to show the financial changes resulting from transportation operations and other business of the accounting company during the accounting period.

I. OPERATING INCOME:
- 501. *Railway operating revenues.
- 531. *Railway operating expenses.
- * Net revenue from railway operations.
- 532. *Railway tax accruals.
- 533. *Uncollectible railway revenues.
- *Railway operating income.
- 502. Revenues from miscellaneous operations.
- 534. Expenses of miscellaneous operations.
- Net revenue from miscellaneous operations.
- 535. Taxes on miscellaneous operating property.
- Miscellaneous operating income.
- Total operating income.

II. NONOPERATING INCOME:
- 503. Hire of freight cars—Credit balance.
- 504. Rent from locomotives.
- 505. Rent from passenger-train cars.
- 506. Rent from floating equipment.
- 507. Rent from work equipment.
- 508. Joint facility rent income.
- 509. Income from lease of road.
- 510. Miscellaneous rent income.
- 511. Miscellaneous nonoperating physical property.
- 512. Separately operated properties—Profit.
- 513. Dividend income.
- 514. Income from funded securities.
- 515. Income from unfunded securities and accounts.
- 516. Income from sinking and other reserve funds.
- 517. Release of premiums on funded debt.
- 518. Contributions from other companies.
- 519. Miscellaneous income.
- Total nonoperating income.
- Gross income (or loss).

* Includes operations of water lines, if any.

PROFIT AND LOSS ACCOUNTS.

[illegible]

[illegible]

1. [illegible]
2. [illegible]

PRIMARY ACCOUNTS.

I. [illegible]:

[illegible]

II. [illegible]:

[illegible]

PROFIT AND LOSS ACCOUNTS.

SPECIAL INSTRUCTIONS.

1. Profit and loss accounts defined.
2. Delayed items.

PRIMARY ACCOUNTS.

I. Credits:

601. Credit balance (at beginning of fiscal period).
602. Credit balance transferred from income.
603. Profit on road and equipment sold.
604. Delayed income credits.
605. Unclaimable overcharges.
606. Donations.
607. Miscellaneous credits.

II. Debits:

611. Debit balance (at beginning of fiscal period).
612. Debit balance transferred from income.
613. Surplus applied to sinking and other reserve funds.
614. Dividend appropriations of surplus.
615. Surplus appropriated for investment in physical property.
616. Stock discount extinguished through surplus.
617. Debt discount extinguished through surplus.
618. Miscellaneous appropriations of surplus.
619. Loss on retired road and equipment.
620. Delayed income debits.
621. Miscellaneous debits.

SPECIAL INSTRUCTIONS.

1. PROFIT AND LOSS ACCOUNTS DEFINED.—Profit and loss accounts are those designed to show the changes in the corporate surplus or deficit during each fiscal period, as effected by the operations and business transactions during that period, by any disposition of net profits made solely at the option of the accounting company, by accounting adjustments of matters not properly attributable to the period, or by miscellaneous gains or losses not provided for elsewhere; and to show also the unappropriated surplus of the carrier at the date of the balance sheet.

2. DELAYED ITEMS.—When no provisions have been made through entries in the operating revenue, operating expense, or other income accounts for anticipating delayed items chargeable or creditable thereto, and the amount of any such item is relatively so large that its inclusion in the accounts for a single year would seriously distort those accounts, the carrier, when so authorized upon application to the Interstate Commerce Commission, shall distribute to Profit and Loss so much of the amount as may be authorized. The application to the Commission for exceptional accounting for delayed items shall give full particulars concerning each item and the reasons which, in the carrier's judgment, indicate the need for a special accounting rule.

Delayed items are items representing transactions which occurred before the current fiscal year.

SPECIAL INSTRUCTIONS.

TEXT PERTAINING TO PROFIT AND LOSS ACCOUNTS

I. CREDITS.

901. CREDIT BALANCE (AT BEGINNING OF FISCAL PERIOD).

This account shall reflect the credit balance of the Profit and Loss Account at the beginning of the fiscal period.

902. CREDIT BALANCE TRANSFERRED FROM INCOME.

This account shall show the net credit balance transferred thereto from the Income Account for the fiscal period.

903. PROFIT ON ROAD EQUIPMENT RETIREMENTS.

This account shall include the profit from dismantling road equipment property in excess of the amount at which such property was carried in the property account at the time of retirement.

904. DEFERRED INCOME CREDITS.

This account shall include all [illegible] credits relating to operating revenue, operating expense, and other income accounts of previous fiscal periods.

This account shall [illegible] the carrier's [illegible] Commerce Commission for the classification of operating revenues and operating expenses, section 2 of the [illegible] for this classification.

NOTE.—Except as provided [illegible] operating expenses, and other income items shall be included in the corresponding [illegible] accounts. [illegible] Commission, the amounts of [illegible] these accounts.

905. UNCLAIMED DIVIDENDS.

This account shall include [illegible] dividends [illegible] Commission [illegible] section 1 of special instructions for [illegible] accounting [illegible].)

906. DONATIONS.

This account shall include [illegible] property [illegible] the carrier [illegible] other property donated by individuals or companies for the [illegible] of property. It shall also include [illegible] and [illegible] in connection with the [illegible] of property. [illegible] the carrier for [illegible] of property [illegible] of compensation, the amount [illegible] shall be credited to this account.

Amounts paid by individuals or companies [illegible] partial or complete [illegible] refer to the fulfillment of [illegible] to the extent to which the liability for reimbursement [illegible] fund. Prior to such determination the amounts received shall be credited to Balance Sheet account No. 778, "Other [illegible]."

[illegible] Balance Sheet account No. 764, "Grants in aid of construction."

607. MISCELLANEOUS CREDITS.

This account shall include amounts, not provided for elsewhere, transferred from other accounts to Profit and Loss, and amounts representing increases of resources not property assignable to the income accounts. Among the items which shall be included in this account are—

Adjustments of overcharges or undercharges of prior years.

Cancellation of balance-sheet accounts representing unclaimed wages and vouchered accounts written off because of carrier's inability to locate the creditor.

Profit derived from the sale of investment securities.

Profit derived from the sale of property carried in balance-sheet account No. 705, "Miscellaneous physical property."

Credits resulting from adjustments required to bring to par securities issued or assumed by the accounting company and reacquired at a cost less than the par value.

Premiums on capital stock at the time of its reacquirement (see special instructions for balance-sheet accounts, section 3).

Unexhausted premiums on funded debt reacquired before maturity (see special instructions for balance-sheet accounts, section 3).

Collections of old accounts previously written off.

NOTE.—Revenue overcharges when determined to be irrefundable shall be credited to account No. 605, "Unrefundable overcharges."

II. DEBITS.

611. DEBIT BALANCE (AT BEGINNING OF FISCAL PERIOD).

This account shall include the debit balance in the Profit and Loss Account at the beginning of the fiscal period.

612. DEBIT BALANCE TRANSFERRED FROM INCOME.

This account shall show the net debit balance brought forward from the Income Account for the fiscal period.

613. SURPLUS APPLIED TO SINKING AND OTHER RESERVE FUNDS.

This account shall include amounts definitely appropriated from surplus and applied to sinking and other reserve funds, and allotments or payments of definite amounts from surplus into sinking and other reserve funds under the terms of mortgages, deeds of trust, or other contracts that provide for such allotments or payments.

NOTE A.—The amounts charged to this account shall be concurrently credited to the appropriate balance-sheet accounts.

NOTE B.—[illegible] shall be charged to Income account No. 800, "Income applied to sinking and other reserve funds."

614. DIVIDEND APPROPRIATIONS OF SURPLUS.

This account shall include amounts definitely declared payable from surplus as dividends on actually outstanding capital stock issued or assumed by the accounting company, other than subsidiary stock. (See definition of the several classes of capital stock in balance-sheet account No. 791, "Capital stock.") If a dividend is not payable in cash the consideration shall be described in the entry with sufficient particularity to identify it.

This account shall be subdivided so as to show separately the dividends on the various subclasses of capital stock.

NOTE A.—Interest accrued on debentures shall be charged to [illegible] account No. 546, "Interest on funded debt."

NOTE B.—This account shall not be credited for dividends on capital stock issued or assumed by the accounting company and owned by it, whether pledged as collateral or otherwise.

collateral or held in its treasury, in special reserves or in the form of other special funds. (See account No. 613, "Surplus applied to sinking and other reserve funds.")

NOTE C.—Similar appropriations made from income shall be charged to income account No. 340, "Miscellaneous appropriations of income."

615. SURPLUS APPROPRIATED FOR INVESTMENT IN PHYSICAL PROPERTY.

This account shall include amounts currently appropriated from surplus, to be applied for the construction or acquisition of new lines and extensions and of additions to and betterments of property the cost of which is includible in the road and equipment accounts or applied for the construction, acquisition, or improvement of property the cost of which is includible in balance-sheet account No. 705, "Miscellaneous physical property," and also the amount of donations in aid of construction, made to individuals and companies, not subject to distribution as dividends.

Records of the accounting carrier shall be so kept that the appropriations charged to this account for any fiscal period may be distinguished as relating to (a) amounts expended during preceding fiscal periods, (b) amounts expended during the current fiscal period, and (c) amounts held in reserve.

NOTE A.—Similar appropriations made from income shall be credited to income account No. 334, "Income appropriated for investment in physical property."

NOTE B.—The amounts charged to this account shall be distributed to balance-sheet account No. 715, "Additions to property through surplus and donations," as the work is completed, and the amounts so distributed shall be specifically identified, as may be appropriate, with the property for which they were appropriated.

616. STOCK DISCOUNT EXTINGUISHED THROUGH SURPLUS.

This account shall include amounts currently appropriated from surplus to reduce or extinguish the discount on capital stock created by the accounting company. (See special instruction for balance-sheet account No. 791, section 24, of Uniform System of Accounts.)

NOTE.—Similar appropriations made from income shall be charged to income account No. 335, "Stock discount extinguished through income."

617. DEBT DISCOUNT EXTINGUISHED THROUGH SURPLUS.

This account shall include appropriations of surplus made, at the option of the accounting company, to extinguish the discount and expense on funded debt. (See income account No. 342, "Amortization of discount on funded debt," and balance-sheet account No. 781, "Discount on funded debt.")

618. MISCELLANEOUS APPROPRIATIONS OF SURPLUS.

This account shall include amounts currently appropriated from surplus to provide a reserve for general accounts not specifically provided in account No. 613, "Surplus applied to sinking and other reserve funds," for the discharge of the principal (less the discount, if any entered at the time of sale) of any indebtedness incurred in the acquisition or improvement of property carried in the road and equipment accounts; also other amounts appropriated from surplus and not provided for elsewhere.

NOTE.—Similar appropriations made from income shall be charged to income account No. 336, "Miscellaneous appropriations of income."

619. LOSS ON RETIRED ROAD AND EQUIPMENT.

This account shall include charges to Profit and Loss as provided for in the classification of investment in road and equipment, on account of (1) road which has been abandoned, sold, or otherwise retired, and (2) equipment which has been abandoned, sold, or otherwise retired. (See general instructions, section 8, and general account II, Equipment, in the classification of investment in road and equipment.)

620. DELAYED INCOME DEBITS.

This account shall include relatively large debits relating to operating revenue, operating expense, and other income accounts of previous fiscal periods.

This account shall be used only after permission of the Interstate Commerce Commission has been obtained. (See section 3 of the general instructions for the classification of operating revenues and operating expenses, section 2 of the special instructions for the income accounts, and section 2 of the special instructions for this classification.)

NOTE A.—Except as otherwise above, delayed items relating to operating revenue, operating expense, and other income items shall be included in the appropriate revenue, expense, or other income account for the fiscal period in which the audit or the items occurs.

NOTE B.—All entries in this account shall be made in such detail as will indicate the operating revenue, operating expense, or other income accounts to which they relate.

621. MISCELLANEOUS DEBITS.

This account shall include amounts, not provided for elsewhere, chargeable to Profit and Loss from other accounts, amounts written off in consequence of adjustments, and payments not properly chargeable to the income accounts. Among the items which shall be charged to this account are—

Adjustments or cancellations of balance-sheet accounts.

Losses or debits not properly chargeable to income, such as uncollectible bills (other than bills covering revenue charges) for which no reserve has been provided.

Losses resulting from the sale of investment securities.

Losses resulting from the sale, destruction, or abandonment of property carried in balance-sheet account No. 705, "Miscellaneous physical property."

Debits resulting from adjustments required to bring to par securities issued or assumed by the accounting company and reacquired at a cost exceeding the par value.

Adjustments of the difference between the book value and estimated value of land withdrawn from railway service and charged to account No. 705, "Miscellaneous physical property." (See general instructions in the classification of investment in road and equipment, section 10.)

Discounts on stock reacquired, unextinguished at the time of its reacquirement.

Unextinguished discounts on funded debt reacquired before maturity.

Payments of old accounts previously written off.

Penalties and fines for violation of the Act to Regulate Commerce, or other Federal laws, when not specifically provided for elsewhere.

NOTE.—Revenue charges when determined to be uncollectible shall be charged to income account No. 532, "Uncollectible railway revenues."

GENERAL BALANCE SHEET ACCOUNTS.

SPECIAL INSTRUCTIONS.

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BALANCE-SHEET STATEMENT.

Form of general balance-sheet statement

SPECIAL INSTRUCTIONS.

1. BALANCE-SHEET ACCOUNTS.—Balance-sheet accounts are those showing the assets, liabilities, and corporate surplus or deficit of the business.

2. DISCOUNT AND PREMIUM ON CAPITAL STOCK.—Ledger accounts shall be provided to cover the discounts and premiums at the sale or issue of each subclass of capital stock issued or assumed by the company. The total of the net debit balances standing in these several accounts shall be included in account No. 734, "Discount on capital stock," and the total of the net credit balances in account No. 735, "Premiums on capital stock." For explanation of *subclass* see account No. 731, "Capital stock."

By the term *discount* is meant the excess of the par value of stocks actually issued or assumed over the actual money value of the consideration received for such stocks. By the term *premium* is meant the excess of the actual money value of the consideration received for stock actually issued or assumed over the par value of such stock.

The term *premium* is not intended to include amounts received representing expected dividends considered to have accrued since the last dividend period in case of stocks on which dividends are regularly paid, nor to discount, as above defined, intended to be diminished by any such amount representing expected dividends explicitly stated in the price at which the stock is issued.

Entries in these accounts representing discounts shall be carried therein until offset (1) by premiums realized on subsequent sales of the same subclass of stock, (2) by assessments levied on the stockholders, (3) by appropriations of income or surplus for that purpose, or (4) by charges to Profit and Loss upon reacquirement of the stock. Entries in these accounts representing premiums realized shall be carried therein until offset (1) by discounts suffered on sales of the same subclass of stock, or (2) by credits to Profit and Loss upon reacquirement of the stock.

In case the accounting company is permitted and elects to distribute all or any part of the net premium on its capital stock to its stockholders, the amount thus distributed shall be charged to the premium account.

For the purpose of this classification the premium realized at the sale of capital stock shall not be considered a profit and lost item, except upon the reacquirement of the stock sold.

In no case shall discount on capital stock be charged to or included in any account as a part of the cost of acquiring any property, tangible or intangible, or as a part of the cost of operation.

When stock which has been issued or assumed by the accounting company is reacquired, the difference between the price paid and the par value of the stock shall be credited to profit and loss account No. 607, "Miscellaneous credits," or charged to account No. 621, "Miscellaneous debits," as may be appropriate. Concurrently the premium or discount account for the particular issue of stock reacquired shall be adjusted through Profit and Loss, to the extent of the premium or discount applicable to the shares reacquired. In case the premium realized or discount suffered at the prior sale of the stock reacquired has been included in an asset account other than the premium and discount accounts,

such asset account shall be concurrently adjusted through Profit and Loss
the extent of the premium or discount previously included therein with resp
to the shares reacquired.

3. Discount, Expense, and Premium on Funded Debt.—Ledger accounts
be provided to cover the discounts, expense, and premiums at the sale or remis
retirement of funded debt and of receiver's certificates issued for the benefit of
assumed by the company. For explanation of subjects see account No.
"Funded debt unmatured."

By the term discount is meant the excess of the par value of funded debt securi
(of whatever kind) issued or assumed, and the accrued interest thereon, over the act
cash value of the consideration received for such securities.

By the term premium is meant the excess of the actual cash value of the consid
received for funded debt securities (of whatever kind) issued or assumed ov
the par value of such securities and the accrued interest thereon.

By the term expense is meant all charges in connection with the issue
sale of evidences of debt, such as legal drafting mortgages and trust deeds; fees
terms for having same recorded; mortgages and trust deeds; cost of engraving and print
bonds; certificates of indebtedness, and other negotiable paper having a life
more than one year; fees paid trustees provided for in mortgages and tru
deeds; fees paid for legal services in matters relative to mortgage securities
fees paid underwriters and brokers for marketing such evi
dences of debt; and other like expenses.

The total of the net debit balances remaining in these several accounts should be
included in account No. 725, "Discount on funded debt," and the total of the net
credit balances in account No. 772, "Premium on funded debt."

Each fiscal period there shall be charged to Income account No. 540, "Amorti
zation of discount on funded debt," a proportion (based upon the ratio of such
fiscal period to the remaining life of the respective securities reckoned from the
beginning of the period to the date of maturity of the debt to which the charges
relate) of such of the debit balances in these accounts, and correspondingly there
shall be credited to Income account No. 541, "Amortization of premium on funded
debt," a similar proportion of such of the credit balances in these accounts.
Optional is allowed the option of extinguishing at any time, through charges to
Profit and Loss, all or any portion of the debit balances remaining in any of
these accounts and of deferring the extinguishment of credit balances until the
maturity of the

We say, rather, that which has been actually issued to bona fide holders for
value is recognized by the accounting company, that proportion of the balance
remaining in the accounts containing discount, expense, and premium on funded
debt for the reduction of the security recognized applicable to the portion to
be acquired shall be credited or charged thereto as may be appropriate, and
concurrently charged or credited to Profit and Loss. Such proportion shall be
based upon the ratio of the par value of the security recognized to the gr
value of all the securities of the character usually outstanding immediately
before such reacquirement.

In case, however, the proportion written off or to be written off at the time
of the reacquirement has been inadequate (in excess of the debit or credit
balance of the account) the difference shall be charged to Profit and Loss.

In all other accounts other than the premium and discount accounts
above specified, such as concurrently adjusted through Profit and Loss in
the manner of valuation of the property or the previously included items
with respect to the securities reacquired.

Except as provided for in road and equipment account No. 76, "Interest during
construction," no interest on funded debt shall be charged to or included

in any account as a part of the cost of acquiring any property, tangible or intangible, or as a part of the cost of *flotation*.

4. CONTINGENT ASSETS AND LIABILITIES.—Contingent assets and liabilities shall not be included in the body of the balance-sheet statement, but shall be shown in detail in a supplementary statement accompanying the balance-sheet statement. Contingent assets are those without value to the accounting company until the fulfillment of conditions regarded as uncertain. Contingent liabilities include items which may, under certain conditions, become obligations of the company, but are neither direct nor assumed obligations on the date of the balance sheet.

5. BASIS OF VALUES OF SECURITIES OWNED.—The accounting company is allowed the option of carrying its investments in securities other than those issued or assumed by it either at cost or at a reasonable valuation other than cost. In recognition of this option the term *ledger value* is used in the text of the accounts representing securities owned.

6. INCOME FROM SINKING FUND ASSETS.—Accrued interest on uninvested sinking fund cash on deposit in banks or trust companies, and accrued interest and other income arising from stocks, bonds, or other assets held in sinking and reserve funds shall be credited to account No. 715, "Income from sinking and other reserve funds," and when required by the mortgage or other provision to be held in the funds shall be charged, according to the character of the funds, to account No. 702, "Sinking funds," or to account No. 721, "Insurance and other funds," and concurrently, if a reserve is required, an equal amount shall be charged to income account No. 852, "Income applied to sinking and other reserve funds" and credited to account No. 778, "Insurance and casualty reserves," No. 781, "Sinking fund reserves," or No. 782, "Miscellaneous fund reserves," as the case may require.

7. CURRENT ASSETS.—In the group of accounts designated as current assets (accounts No. 706 to No. 719, inclusive) there shall not be included any item the ledger value of which is not reasonably assured by the known financial condition of the debtor. The amount of any item of a current character but of doubtful value shall be included in account No. 722, "Other deferred assets," or written off through Profit and Loss, as may be appropriate. If desirable to retain a record of the item in the balance sheet, it may be stated at a nominal value in account No. 722, "Other deferred assets," the difference between the full amount of the item and such nominal value being charged to Profit and Loss.

8. JOINT LIABILITIES.—The accounting company shall state as a liability in its balance sheet the total par value of securities jointly issued by it and others, and it shall include in account No. 722, "Other deferred assets," the portion of such liability which, under the joint arrangement, it is expected will be liquidated by the other party or parties to the joint arrangement.

TEXT PERTAINING TO GENERAL BALANCE SHEET ACCOUNTS.

DEBITS.

701. INVESTMENT IN ROAD AND EQUIPMENT.

This account shall include the accounting company's investment in road and equipment (including that held under contract for purchase) in existence at the date of the balance sheet. The accounting company's records shall be kept in such manner as to show the amount credited to this account subsequent to June 30, 1914, for property retired, the cost of which was included in the account of that date.

NOTE A.—This account shall not include any items representing offset to securities.

NOTE B.—When any equipment is acquired under an agreement which provides that the cost shall be paid in installments, the cost (the money value at time of purchase) shall be charged to the appropriate road and equipment accounts at the time of its acquisition, and included in this account, in the same manner as the cost of equipment purchased outright. When the par value of notes or other securities issued in payment, or in part payment, for such equipment is more (or less) than the actual cash value of the equipment at the time of the purchase, or of the proportion to which the securities are applicable, the difference between the par value of the securities and the actual cash value of the equipment, or of the proportion paid for by the securities, shall be charged (or credited) to the proper discount and premium accounts.

702. IMPROVEMENTS ON LEASED RAILWAY PROPERTY.

This account shall include the accounting company's investment in additions and betterments made by it to railway property held under long-term lease or through control of the corporation owning the property and in existence at the date of the balance sheet. The accounting company's records shall be kept in such manner as to show the amount credited to this account subsequent to June 30, 1914, for property retired, the cost of which was included in the account at that date. The amounts included in this account shall be classified in the accounts provided in the classification for investment in road and equipment.

NOTE.—This account shall not include any items representing offset to securities.

703. SINKING FUNDS.

This account shall include the amount of cash, the ledger value of live securities of other companies, and other assets which are held by trustees of sinking and other funds for the purpose of redeeming outstanding obligations, including such assets so held in the hands of the accounting company's treasurer when the assets are segregated in a distinct fund; also amounts deposited with such trustees on account of mortgaged property sold the proceeds of which are to be held for the redemption of securities, and the par value of live securities issued or assumed by the accounting company and held in such funds. A separate account shall be kept for each fund. The title of each such account shall designate the obligation in support of which the fund is created.

NOTE.—In stating the balance sheet in the annual reports to the Commission the total amount of the funds and the par value of securities issued or assumed by the accounting company and held in the funds shall be shown in the short contra, and details as to each of the funds (total amount, securities issued or assumed) shall be shown in the long contra.

704. DEPOSITS IN LIEU OF MORTGAGED PROPERTY SOLD.

This account shall include funds deposited with trustees, to be held until mortgaged property sold is replaced.

NOTE.—In stating the balance sheet in the annual reports to the Commission the total amount of the funds and the par value of securities issued or assumed by the accounting company and held in the funds shall be shown in the short columns, and the net amount of the funds (total amount less securities issued or assumed) shall be shown in the long column.

705. MISCELLANEOUS PHYSICAL PROPERTY.

This account shall include the accounting company's investment in physical property other than transportation property assignable to accounts Nos. 701 and 702, including hotels, restaurants, commercial power plants, etc., which are entirely distinct from transportation property and are not operated in connection with the transportation service of the accounting company.

Items of investment.

Coal and other mines.
Commercial power plants.
Hotels and restaurants.
Lands and buildings not used in transportation operations.
Lands and other property acquired and held in anticipation of future use.
Mineral and timber lands.
Rails and other track material leased to others.
Sawmills and other manufacturing plants not operated in connection with transportation service.

706. INVESTMENTS IN AFFILIATED COMPANIES.

This account shall include the ledger value of the accounting company's investment advances to affiliated companies, also of its investment in securities issued or assumed by such companies, such securities not being held in special deposits or in specific funds.

This account shall be subdivided:

(a) Stocks.

(b) Bonds.

(c) Notes, including herein not only notes that run longer than one year and all notes of affiliated companies held as investments, but also notes payable on demand or within one year from the date of issue when it is mutually understood and intended that the notes shall not be enforced as current assets.

(d) Advances.

The accounting company's record shall be kept in such manner that the ledger value of securities pledged as collateral security for any of the accounting company's funded debt or short-term loans and the ledger value of securities unpledged may be shown separately in the annual report to the Commission.

NOTE A.—Accounts with affiliated companies which are subject to current settlements, such as traffic and car-service balances, charges for material and supplies currently furnished, charges for repairs to equipment, etc., shall be stated in current assets or current liabilities, as may be appropriate.

NOTE B.—The term affiliated companies includes

1. Controlled companies, including companies solely controlled by the accounting company, and also companies jointly controlled by the accounting company and others under a joint arrangement.

2. Controlling companies, including companies solely controlling the accounting company, and companies which jointly control the accounting company under a joint arrangement.

3. Companies controlled by controlled companies.

4. Companies controlled by controlling companies.

By control is meant the ability to determine the action of a corporation. For the purpose of this account, the following are to be considered forms of control:

(c) Right through title to securities thereof as security for moneys due under part of the voting power in the controlled corporation.

(d) Right through agreement of some character or through some source other than title to securities, to elect the majority of the board of directors, managers, or trustees of the controlled corporation.

(e) Right to exercise a veto power over all or a major part in value of the tangible property of the controlled corporation.

(f) Right to secure control in connection with a change in the management or the operating properties of the controlled corporation.

(g) Right to control policy in a specific respect (as the action of the controlled corporation.

A leasehold interest in the property of a corporation is not to be classed as a form of control over the lessor corporation.

Sole control is that which rests in one corporation.

Joint control is that which rests in two or more corporations and which is held under a joint arrangement.

Note C.—The value of securities pledged by the accounting company and pledged shall not be included in this account.

Note D.—The value of securities pledged for purposes other than that of security for funded debt or short-term loans shall be included in account No. 708, "Sinking funds," No. 704, "Deposits in lieu of mortgaged property sold," No. 712, "Special deposits," or No. 714, "Insurance and other funds," as may be appropriate.

707. OTHER INVESTMENTS.

This account shall include the ledger value of the accounting company's investment advances to nonaffiliated companies and to individuals, and of its investment in securities issued or assumed by such companies, such securities not being held in special deposits or in special funds; also miscellaneous investments not provided for elsewhere.

This account shall be subdivided:

(a) Stocks.

(b) Bonds.

(c) Notes, including herein not only notes that run longer than one year and all notes of nonaffiliated companies and of individuals held as investments, but also notes payable on demand or within one year from date of issue when it is mutually understood and intended that the notes shall not be enforced as current assets.

(d) Advances.

(e) Miscellaneous.

The accounting company's records shall be kept in such manner that the ledger value of securities pledged as collateral security for any of the accounting company's funded debt or short-term loans and the ledger value of securities unpledged may be shown separately in the annual report to the Commission.

Note A.—Accounts with nonaffiliated companies which are subject to current settlement, such as traffic and car-service balances, charges for materials and supplies currently furnished, charges for repairs to equipment, and [illegible] or current transactions, are not to be included.

Note B.—[illegible] companies [illegible] than those included in account No. 706, "Investments in affiliated companies."

Note C.—The value of securities deposited by the accounting company and pledged shall not be included in this account.

Note D.—The value of securities pledged for purposes other than that of security for funded debt or short-term loans shall be included in account No. 708, "Sinking funds," No. 704, "Deposits in lieu of mortgaged property sold," No. 712, "Special deposits," or No. 714, "Insurance and other funds," as may be appropriate.

708. CASH.

This account shall include money, checks, sight drafts, and sight bills of exchange in the hands of the accounting company's financial officers and agents, or in transit from its agents and conductors for which such agents and conductors have received credit. It shall also include deposits with banks and trust companies subject to check. (See special instructions, section 7.)

[illegible]

This account shall include the amount of demand loans fully secured by stocks, bonds, and other negotiable collateral, and of deposits with banks and trust companies when such items are subject to collection on demand. (See special instructions, section 7.)

710. TIME TRAFFIC AND DEPOSITS.

This account shall include the amount of time drafts receivable and time deposits with banks and trust companies. (See special instructions, section 7.)

711. SPECIAL DEPOSITS.

This account shall include funds specially deposited (other than in sinking funds) for the payment of dividends, interest, and other charges, also money and securities deposited to insure the performance of contracts to be performed within one year from the date of the balance sheet; and other deposits of a special nature not provided for elsewhere. (See special instructions, section 7.)

[illegible]

712. LOANS AND BILLS RECEIVABLE.

This account shall include the book value of all collectible obligations in the form of demand or time loans and bills receivable, or other similar evidences (except interest coupons) of money receivable within a time not exceeding one year from date of issue. (See special instructions, section 7.)

[illegible]

713. TRAFFIC AND CAR-SERVICE BALANCES RECEIVABLE.

This account shall include the net amount receivable from other companies, [illegible] on account of interline freight, passenger, and baggage revenues, and charges for [illegible] interchanged on a per diem or a mileage basis. (See special instructions, section 7.)

NOTE.—The amount to be entered in this account is not the net balance shown [illegible]

714. NET BALANCES RECEIVABLE FROM AGENTS AND CONDUCTORS.

This account shall include the net balances due on account of agents [illegible] from trains, stations, and other sources, and from [illegible] collectors, [illegible] employees and representatives charged with [illegible] (See special instructions, section 7.)

715. MISCELLANEOUS ACCOUNTS RECEIVABLE.

This account shall include amounts due on audited accounts considered good, [illegible] and from the United States on account of transportation [illegible] Government property, and from express companies for express [illegible] and other sundry accounts not [illegible] account. [illegible]

of freight, labor, [illegible] and other similar items. (See special instructions, section 7.)

Note.—The amount to be entered in account No. 731, "Unadjusted debits."

715. MATERIAL AND SUPPLIES.

This account shall include the balances representing the cost, less depreciation, if any, of all unapplied material, such as coal and shop material, articles in process of manufacture by the accounting company, fuel, stationery, and dining car and other supplies. In determining the cost of material and supplies suitable allowance shall be made for any discounts allowed in the purchase thereof.

Note.—Material representing the cost of completed construction material and supplies issued on the point of completion of the work for which they were purchased, and remaining on hand, and erroneously entered in account No. 37, "Unapplied construction material and supplies."

717. INTEREST AND DIVIDENDS RECEIVABLE.

This account shall include the amount of interest accrued to the date of the balance sheet on bonds owned and on loans made, the amount of dividends declared on stocks owned, and dividends accrued on such stocks when contracts require that the dividends be paid at stated times. (See special instructions, section 7.)

Note A.—No amount representing interest or dividends receivable shall be included in this account which for payment is reasonably subject to contingency, anticipated provision, or otherwise.

Note B.—No dividends or other returns on securities issued or assumed by the accounting company shall be included in this account.

718. RENTS RECEIVABLE.

This account shall include rents receivable accrued to the date of the balance sheet under leases and not includible in account No. 715, "Miscellaneous accounts receivable." It is not required that minor rents shall be accounted for upon an accrual basis. (See special instructions, section 7.)

719. OTHER CURRENT ASSETS.

This account shall include items of current assets and circular No. 765 to 719 inclusive.

It shall include also items that do not yet reached the stage of settled accounts and become claimable [illegible] account No. 719, and not yet charged beyond the stage of ordinarily prompt payments in account No. 719. (See special instructions, section 7.)

720. WORKING FUND ADVANCES.

This account shall include amounts advanced to general and special agents, and to other officers and employees, as working funds from which certain expenditures are to be made and accounted for. It also includes advances to fast freight lines and to associations and other bureaus.

721. INSURANCE AND OTHER FUNDS.

This account shall include the amount of cash and the [illegible] value of securities of other companies and other assets which are in the hands of trustees or managers of insurance, employees' pension, savings, relief, hospital, and other funds which have been created and specifically are available or invested for specific purposes as provided for elsewhere also the par value of securities issued or assumed by the accounting company and held in such funds. A separate account shall be kept for each fund.

Form A.—Sinking funds and special deposits for the retirement of obligations are provided for in accounts No. 703 and No. 711, respectively.

NOTE B.—In stating the balance sheet in the annual reports to the Commission the book amount of the funds and the par value of securities issued or assumed by the accounting company and held in the funds shall be shown in the short columns, and the net amount of the funds (total amount less securities issued or assumed) shall be shown in the long column.

NOTE C.—This account shall not include funds held by the accounting company solely as trustee and in which it has no beneficial interest.

722. OTHER DEFERRED ASSETS.

This account shall include items of deferred assets not covered by accounts No. 720 and No. 721.

723. RENTS AND INSURANCE PREMIUMS PAID IN ADVANCE.

This account shall include the balances in the accounts representing prepaid rents chargeable to the appropriate rent accounts under Income as the term is consumed for which the rents are paid; also insurance premiums paid in advance of their accrual, which premiums are to be apportioned and charged, as they accrue, to appropriate accounts.

724. DISCOUNT ON CAPITAL STOCK.

This account shall include the total of the net debit balances in the discount and premium accounts for the several subclasses of capital stock. (See special instructions, section 2.)

725. DISCOUNT ON FUNDED DEBT.

This account shall include the total of the net debit balances in the discount, expense, and premium accounts for the several subclasses of funded debt. (See special instructions, section 3.)

726. PROPERTY ABANDONED CHARGEABLE TO OPERATING EXPENSES.

This account is intended as a suspense account, in which may be included amounts chargeable to Operating Expenses for fixed improvements abandoned directly in connection with improvement or betterment work which are relatively large and the inclusion of which in the carrier's accounts for a single year would seriously distort the accounts. It is to be used only after permission of the Interstate Commerce Commission has been asked and given. The carrier, in its application to the Commission, shall give full particulars concerning the property retired, the amount chargeable to Operating Expenses, and the period over which, in its judgment, the amount of such charge should be distributed.

For each item remaining at the close of the year in this account the accounting carrier shall indicate in its annual report to the Commission, with respect to each item of property abandoned, the period over which it is proposed to distribute the balance relating to the item, the date of the abandonment of the property, and the total amount originally to be charged to Operating Expenses.

727. OTHER UNADJUSTED DEBITS.

This account shall include the amount of debit balances in suspense accounts that can not be entirely cleared and disposed of until additional information is received, such as freight claims paid when found to be correct, but in advance of investigation with other carriers; interest paid in advance; debit balances in clearing accounts, such as "Shop expenses," "Store expenses," "Operations of gravel pits," and "Operations of quarries"; items credited to Operating Revenues or Operating Expenses on an estimated basis in accordance with general instructions for the classification of operating revenues and operating expenses, section 2; uncertin-

guished discount on short-term notes; estimated accrued depreciation on equipment leased (see general instructions, section 2); unadjusting debit items not provided for in accounts Nos. 724, 725, and 726, and other similar items.

728. SECURITIES ISSUED OR ASSUMED—UNPLEDGED.

This account shall include the par value of securities issued by the accounting company and the par value of securities issued by other companies and assumed by the accounting company, that are in its unpledged in the company's treasury or by its agents or trustees, except trustees of sinking or other similar funds.

This account shall be divided into (a) Stocks, and (b) Bonds and other evidences of funded debt, each of which divisions shall be further so subdivided that in the company's annual report to the Commission may be shown (1) amount nominally but not actually issued, and (2) amount nominally outstanding.

NOTE A.—The term securities, as used in this account, includes all authorized certificates of stock and evidences of indebtedness which have been signed, sealed, and, when required, certified by the registrar or by the trustees under the mortgage or contract, and are not short-term securities. By short-term securities are meant those which are payable on demand or which mature not more than one year from date of issue. (See also Notes B to accounts Nos. 721 and 723.)

NOTE B.—This account shall not include securities that are merely guaranteed.

NOTE C.—This account shall not include any securities held in sinking and other reserve funds.

NOTE D.—In the general balance-sheet statement the balance in this account shall be stated in the short column only.

NOTE E.—When any securities have been actually issued to bona fide holders for value, or after issue by another company have been assumed by the accounting company, and after such issue or assumption are reacquired under circumstances which require that they shall not be treated as canceled or retired, they shall be included in this account at par value; the difference between the par value and the amount paid in reacquiring such securities shall be debited (or credited, as the case may be) to Profit and Loss. If such securities are subsequently pledged, they shall be included in account No. 730, "Securities issued or assumed—Pledged." (See special instructions, sections 8 and 9.)

730. SECURITIES ISSUED OR ASSUMED—PLEDGED.

This account shall include the par value of that portion of securities pledged by the accounting company as collateral security for any of its funded debt or short-term loans, which consists of securities issued by the accounting company and securities issued by other companies the obligation for payment of which has been assumed by the accounting company. This account shall be subdivided into (a) Stocks, and (b) Bonds and other evidences of funded debt, each of which divisions shall be further so divided that in the company's annual report to the Commission may be shown (1) the amount nominally but not actually issued, and (2) the amount nominally outstanding.

NOTE A.—The term securities as used in this account includes all authorized certificates of stock and evidences of indebtedness which have been signed, sealed, and, when required, certified by the registrar or by the trustees under the mortgage or contract, and are not short-term securities. By short-term securities are meant those which are payable on demand or which mature not more than one year from date of issue. (See also Notes B to accounts Nos. 721 and 723.)

NOTE B.—This account shall not include securities that are merely guaranteed.

NOTE C.—This account shall not include securities which have been borrowed by the accounting company and pledged, nor any securities held in sinking and other reserve funds.

NOTE D.—In the general balance-sheet statement the balance in this account shall be stated in the short column only.

NOTE E.—The par value of securities issued or assumed and pledged for purposes other than that of security for funded debt or short-term loans shall be shown in account No. 708, "Sinking funds"; No. 709, "Deposits in lieu of mortgaged property sold," No. 711, "Special deposits"; or No. 721, "Insurance and other funds," as may be appropriate.

NOTE F.—When any securities have been actually issued to bona fide holders for value, or after issue by another company have been assumed by the accounting company, and after such issue

or consumptive use recognized under circumstances which require that they shall not be treated as canceled or retired, they shall be included in account No. 726, "Securities issued or assumed—Unpledged," at par value; the difference between the par value and the amount paid in reacquiring such securities shall be debited (or credited, as the case may be) to Profit and Loss. If such securities are subsequently pledged, they shall be included in this account. (See special instructions, sections 2 and 3.)

CREDITS.

780. CAPITAL STOCK.

This account shall include the total par value of certificates or receipts issued to represent permanent interests in the accounting company, or interests which, if terminable, are so only at the option of the company.

The amounts included in this account shall be divided so as to show the par value of (1) certificates (pledged or unpledged) held in the company's treasury, by its agents or trustees, or otherwise subject to its control, including both those reacquired after actual issue and those nominally but never actually issued; and (2) certificates issued and actually outstanding, being those not held by the company, its agents or trustees, or subject to its control.

The amounts included herein shall be further divided so as to show the amount of each class of stock issued, as follows:

(a) COMMON STOCK.—Stocks which have no preference in distribution of dividends.

(b) PREFERRED STOCK.—Stocks having preference in distribution of dividends.

(c) DEBENTURE STOCK.—Stocks issued under a contract to pay a specified return at specified intervals.

(d) RECEIPTS OUTSTANDING FOR INSTALLMENTS PAID.—Receipts for payments on account of subscriptions to capital stock. When certificates are issued for amounts so paid, the par value shall be included in the account covering the class of stock for which the certificates are issued.

Each of the above classes shall also be divided into subclasses according to differences in dividend or interest rights, voting rights, or conditions under which the securities may be retired.

NOTE A.—When a general levy or assessment is made against the holders of capital stock, requiring the payment of any sum for the use of the company in addition to the consideration agreed upon at the time of sale, the amount collected upon such levy or assessment shall be credited to the discount and premium account for the subclass of stock on which the assessment is made.

NOTE B.—For the purposes of the balance-sheet statement capital stock is considered to be constructively issued when certificates are signed and sealed and placed with the proper officer for sale and delivery, as pledged, or otherwise placed in some special fund of the accounting company. It is considered to be *actually* issued when it has been sold to a bona fide purchaser for a valuable consideration, and such purchaser holds it free from all control by the accounting company. All capital stock actually issued and not reacquired and held by or for the accounting company is considered to be *actually outstanding*. If reacquired by or for the accounting company under such circumstances as require it to be considered as held alive and not canceled or retired, it is considered to be *nominally outstanding*.

NOTE C.—In the general balance-sheet statement the total capital stock included in the account shall be shown in the first short column. The amount nominally but not actually issued and the amount nominally outstanding shall be shown in the second short column, and in the long column shall be shown the amount actually outstanding.

782. STOCK LIABILITY FOR CONVERSION.

This account shall include the company's liability under agreements to exchange its capital stock for the outstanding securities of companies whose physical property has been acquired under such agreements, but whose securities have not yet been surrendered for exchange.

753. PREMIUM ON CAPITAL STOCK.

This account shall include the total of the net credit balances in the discount and premium accounts for the several subclasses of capital stock. (See special instructions, section 2.)

754. GRANTS IN AID OF CONSTRUCTION.

This account shall include the estimated money value at time of acquisition of land and other grants received from States, municipalities, and other public corporations as their contributions toward the construction or acquisition of property the cost of which is chargeable to investment in road and equipment.

755. FUNDED DEBT UNMATURED.

There shall be included in this account the total par value of unmatured debt, maturing more than one year from date of issue, issued by the accounting company and not retired or canceled, and the total par value of similar unmatured debt of other companies, the payment of which has been assumed by the accounting company.

The amounts included in this account shall be divided so as to show the par value of (1) certificates or other evidences of funded debt (pledged and unpledged) held in the company's treasury, by its agents or trustees, or otherwise subject to its control, including both those reacquired after actual issue and those nominally but never actually issued; and (2) certificates or other evidences of funded debt issued and actually outstanding, being those not held by the company, its agents or trustees, or subject to its control.

The amounts included herein shall be further divided so as to show the amount of each class of funded debt, as follows:

(*a*) EQUIPMENT OBLIGATIONS.—Equipment bonds, equipment notes, or car-trust notes secured only by lien on specific equipment.

(*b*) MORTGAGE BONDS.—Bonds secured by lien on physical property and not includible in the other subdivisions of this account.

(*c*) COLLATERAL TRUST BONDS.—Bonds and notes secured by a lien on securities or other negotiable paper; and stock trust certificates that are similar in character to collateral trust bonds.

(*d*) INCOME BONDS.—Bonds which are a lien on a carrier's revenue alone, or bonds which, while being a lien on its property and franchises, can claim payment of interest only in case interest is earned.

(*e*) MISCELLANEOUS OBLIGATIONS.—All funded obligations not provided for by the other subdivisions of this account, also notes, unsecured certificates of indebtedness, debenture bonds, [illegible] bonds, real estate mortgages executed or assumed, and other similar obligations maturing more than one year after date of issue.

(*f*) RECEIPTS OUTSTANDING FOR FUNDED DEBT.—Receipts for payments on account of funded debt. When certificates are issued for amounts so paid, the par value shall be included in the account covering the class of funded debt for which the certificates are issued.

Each of the above classes shall also be divided into subclasses according to differences in mortgage or other lien or security therefor, rate of interest, interest dates, or date of maturity. Parts of any issue agreeing in other characteristics but maturing serially may be treated as of the same subclass.

Notes of securities maturing one year or less from date of issue shall be included in account No. 757, "Nonnegotiable debt to affiliated companies," or No. 758, "Notes and bills payable," except that where an issue of securities maturing serially over a period of years contains short-time obligations such obligations may be included as funded debt. Matured funded debt shall be included in account No. 764, "Funded debt matured unpaid."

NOTE B.—For the purposes of the balance-sheet statement funded debt securities are considered to be *nominally issued* when certified by trustees and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the accounting company. They are considered to be *actually issued* when they have been sold to a bona fide purchaser for a valuable consideration, and such purchaser holds them free from all control by the accounting company. All funded debt securities actually issued and not reacquired and held by or for the accounting company are considered to be *actually outstanding*. If reacquired by or for the accounting company under such circumstances as require them to be considered as held alive and not canceled or retired, they are considered to be *nominally outstanding*.

NOTE C.—Nonnegotiable notes having a maturity of more than one year after date of issue, held by affiliated companies, shall be included in account No. 757, "Nonnegotiable debt to affiliated companies."

NOTE D.—In the general balance-sheet statement the total unmatured funded debt included in the account shall be shown in the first short column. The amount nominally but not actually issued and the amount nominally outstanding shall be shown in the second short column, and in the long column shall be shown the amount actually outstanding.

756. RECEIVER'S CERTIFICATES.

When any receiver acting under the orders of a court is in possession of the property of the company and under the orders of such court issues evidences of indebtedness chargeable upon such property, the par value of such evidences shall be credited to this account.

757. NONNEGOTIABLE DEBT TO AFFILIATED COMPANIES.

This account shall include the par value of nonnegotiable notes issued to affiliated companies, credit balances in open accounts with such companies other than credit balances in current accounts classable as current liabilities, and interest accrued on notes and open accounts included in this account, when such interest is not subject to current settlements.

This account shall be divided:

(*a*) Notes, including herein not only nonnegotiable notes that run longer than a term of one year, but also such notes payable on demand or within one year from the date of issue when it is mutually agreed that the notes shall not be enforced as current assets by the holder.

(*b*) Open accounts not subject to current settlement.

(*c*) Interest accrued on amounts included in this account when not subject to current settlements.

NOTE A.—Accounts with affiliated companies which are subject to current settlements, such as traffic and car-service balances, charges for material and supplies currently furnished, charges for repairs to equipment, etc., shall be classed as current assets or current liabilities, as may be appropriate.

NOTE B.—No item shall be included in this account which is not known to be the property of an affiliated company.

NOTE C.—The term *affiliated companies* includes:

1. Controlled companies, including companies solely controlled by the accounting company, and also companies jointly controlled by the accounting company and others under a joint arrangement.

2. Controlling companies, including both companies solely controlling the accounting company, and companies which jointly control the accounting company under a joint arrangement.

3. Companies controlled by controlled companies.

4. Companies controlled by controlling companies.

By control is meant the ability to determine the action of a corporation. For the purposes of this account, the following are to be considered forms of control:

(*a*) Right through title to securities issued or assumed to exercise the major part of the voting power in the controlled corporation.

(*b*) Right through agreement of some character or through some source other than title to securities, to name the majority of the board of directors, managers, or trustees of the controlled corporation.

(*c*) Right to foreclose a first lien upon all or a major part in value of the tangible property of the controlled corporation.

(d) Right to secure control in consequence of advances made for construction of the operating property of the controlled corporation.

(e) Right to control only in a specific respect the action of the controlled corporation.

A leasehold interest in the property of a corporation is not to be classed as a form of control over the lessor corporation.

Sole control is that which rests in one corporation.

Joint control is that which rests in two or more corporations and which is held under a joint arrangement.

758. LOANS AND BILLS PAYABLE.

This account shall include the balances representing obligations outstanding in the form of loans and bills payable or other similar evidences (except interest coupons) of indebtedness payable on demand or within a time not exceeding one year from date of issue.

This account shall be kept in such form that the amounts of notes secured by collateral, payable within one year from date of issue, may be reported separately in the corporation's annual report to the Commission.

NOTE.—This account shall not include obligations which mature more than one year after date of issue, or demand or short-term notes issued to affiliated companies and includible in account No. 757, "Nonnegotiable debt to affiliated companies."

759. TRAFFIC AND CAR-SERVICE BALANCES PAYABLE.

This account shall include the net amount payable to other companies in favor of each of which there is a net credit balance in the total of the accounts representing interline freight, passenger, and baggage revenues, and charges for equipment interchanged on a per diem or a mileage basis.

NOTE.—The amount to be entered in this account is not the balance between this account and account No. 713, "Traffic and car-service balances receivable."

760. AUDITED ACCOUNTS AND WAGES PAYABLE.

This account shall include the amount of audited vouchers or accounts and audited pay rolls unpaid on the date of the balance sheet. It shall include balances representing unclaimed wages and outstanding pay and time or discharge checks issued in payment of wages and all other unpaid vouchered items.

761. MISCELLANEOUS ACCOUNTS PAYABLE.

This account shall include outstanding drafts drawn by station agents, outstanding drafts drawn on the company in settlement of freight claims, conductors' refund and extra-fare checks not presented for redemption, deposits of affiliated companies subject to current settlement, unrefunded overcharges, and other items of the nature of demand liabilities not covered by accounts Nos. 758, 759, 760, 762, 763, and 764.

NOTE.—The amount to be reported under this account is not the net balance between this account and account No. 715, "Miscellaneous accounts receivable."

762. INTEREST MATURED UNPAID.

This account shall include the amount of matured and unpaid interest on loans and on funded debt and receiver's certificates, issued or assumed by the accounting company.

Interest which matures on the first day following that for which the balance sheet is made shall be included in this account.

NOTE.—Interest matured unpaid on nonnegotiable debt to affiliated companies, if not subject to current settlement, shall be included in account No. 757, "Nonnegotiable debt to affiliated companies."

763. DIVIDENDS MATURED UNPAID.

This account shall include the amount of dividends payable on capital stock but unpaid, uncalled for, or unclaimed at the date of the balance sheet.

Dividends which become payable on the first day following that for which the balance sheet is made shall be included in this account.

766. FUNDED DEBT MATURED UNPAID.

This account shall include the amount of funded debt matured and unpaid without any specific agreement for extension as to time of payment, including unpresented bonds drawn for redemption through the operation of sinking and redemption fund agreements.

766. UNMATURED DIVIDENDS DECLARED.

This account shall include dividends declared on capital stock, but not payable until after the first day following the date of the balance sheet.

766. UNMATURED INTEREST ACCRUED.

This account shall include the amount of interest on loans and on funded debt and receiver's certificates issued o assumed, accrued to the date for which the balance sheet is made, but not payable until after the first day following that date.

767. UNMATURED RENTS ACCRUED.

This account shall include rents, under lease or other agreements, accrued to the date for which the balance sheet is made, but not payable until after the first day following that date. It shall also include the amount of accrued dividends on stock and accrued interest on the funded debt of other companies when such dividends and interest are payable by the accounting company as all or a portion of the rent under leases or other agreements with those companies.

768. OTHER CURRENT LIABILITIES.

This account shall include items of current liabilities not covered by accounts No. 758 to No. 767, inclusive.

769. LIABILITY FOR PROVIDENT FUNDS.

This account shall include the ledger balances representing the liability of the accounting carrier for the amount of the assets (whether contributed by the company, by the employees, or by others) in the hands of its treasurer or of trustees or managers acting for it in the administration of employees' pension, savings, relief, hospital, and other association funds.

NOTE A.—This account shall not include items representing funds in which the accounting company has no beneficial interest and which it holds purely as trustee.

NOTE B.—In stating the balance sheet in the annual reports to the Commission, the liability for provident funds which are carried in the current cash of the company shall be included under current liabilities, in account No. 761, "Miscellaneous accounts payable."

770. OTHER DEFERRED LIABILITIES.

This account shall include items of deferred liabilities not covered by account No. 769; such as retained percentages due contractors, to be paid on completion of contracts; deposits for construction of side tracks, to be refunded on the basis of an agreed percentage of the earnings from the traffic handled over the tracks; and other similar items.

771. TAX LIABILITY.

This account shall include the amount of taxes accrued and charged against income accounts No. 532, "Railway tax accruals"; No. 535, "Taxes on miscellaneous operating property"; and No. 544, "Miscellaneous tax accruals" in excess of the amount paid.

If the taxes paid are in excess of the taxes accrued, the amount of the excess shall be shown in red in this account.

772. PREMIUM ON FUNDED DEBT.

This account shall include the total of the net credit balances in the discount, expense, and premium accounts for the several subclasses of funded debt. (See special instructions, section 3.)

773. INSURANCE AND CASUALTY RESERVES.

This account shall include the net credit balance in the accounts to which are credited specific appropriations of income or surplus and such insurance premiums as are concurrently charged to Operating Expenses to cover self-carried risks on fire, fidelity, boiler, casualty, burglar, and other insurance, and to which are charged losses sustained on items protected by such insurance.

774. OPERATING RESERVES.

This account shall include the ledger balances representing reserves created by charges to Operating Expenses for maintenance of road and equipment, for personal injury, loss and damage, and other claims, and for similar purposes, such charges being made currently for the purpose of equalizing charges to operating accounts for the current accounting year. (See special instructions for operating expenses, sections 19 and 20.)

NOTE A.—Debit balances in operating reserve accounts to be cleared by future charges to operating accounts shall be shown in red in this account in the carrier's annual report to the Commission.

NOTE B.—The credit balances in reserve accounts representing appropriations of income or surplus for sinking funds, etc., shall not be included in this account.

NOTE C.—Accrued depreciation credit balances shall be included in accounts Nos. 775, 776, or 777, as may be appropriate.

775. ACCRUED DEPRECIATION—ROAD.

This account shall be credited with amounts charged to Operating Expenses or other accounts to cover the depreciation of fixed improvements, the cost of which is included in account No. 701, "Investment in road and equipment," or in account No. 702, "Improvements on leased railway property."

When any fixed property is destroyed, sold, or otherwise retired from service, the amount included in this account with respect to the property retired shall be charged hereto.

(Note carefully general instructions for the classification of investment in road and equipment, sections 7, 8, 11.)

776. ACCRUED DEPRECIATION—EQUIPMENT.

This account shall be credited with amounts charged to Operating Expenses or other accounts to cover the depreciation of the accounting company's equipment.

When any equipment is destroyed, sold, or otherwise retired from service, the amount included in this account with respect to the property retired shall be charged hereto. (See text of road and equipment general account H, Equipment.)

777. ACCRUED DEPRECIATION—MISCELLANEOUS PHYSICAL PROPERTY.

This account shall be credited with amounts charged to income or other accounts to cover the depreciation of property the cost of which is included in account No. 705, "Miscellaneous physical property."

When any miscellaneous physical property is destroyed, sold, or otherwise retired from service, the amount included in this account with respect to the property retired shall be charged hereto.

778. OTHER UNADJUSTED CREDITS.

This account shall include the amount of credit balances in suspense accounts that can not be entirely cleared and disposed of until additional information is received, such as amounts realized from the sale of damaged, unclaimed, and over freight and held pending claim; switching charges of other carriers collected and held awaiting bills from such carriers; amounts

received from the sale of mileage tickets, to be disposed of as mileage is honored by the accounting or other carriers; amounts received from sales of excess baggage scrip, to be disposed of as coupons are honored; interchangeable mileage credential ticket redemption funds; revenue overcharges subject to refund; credit balances in clearing accounts such as "Shop expenses," "Store expenses," "Operating gravel pits," and "Operating quarries"; items charged to Operating Revenues or Operating Expenses on an estimated basis in accordance with general instructions for the classification of operating revenues and operating expenses, section 2; estimated accrued depreciation on leased equipment (see general instructions, section 2); and other similar items.

779. ADDITIONS TO PROPERTY THROUGH INCOME AND SURPLUS.

This account shall include such amounts of income and surplus as have been definitely appropriated or set aside, and expended since June 30, 1907, in the acquisition of property the cost of which is included in property investment accounts other than those for securities and also the amount of donations in aid of construction made by individuals and companies and not subject to distribution as dividends. Investments in road and equipment, in improvements on leased railway property, and in miscellaneous physical property shall be shown separately in the accounting company's records.

This account may also include amounts definitely appropriated or set aside, and expended prior to June 30, 1907. If such amounts are included, the account shall be kept in such form as to show separately amounts expended to June 30, 1907, and amounts expended since that date.

NOTE.—Temporary appropriations of current funds for the acquisition of property, the cost of which is intended later to be met through an issue of securities, shall not be included in this account.

780. FUNDED DEBT RETIRED THROUGH INCOME AND SURPLUS.

This account shall include the total amount of appropriated income and surplus expended in the discharge of the principal (less the discount, if any, suffered at the time of sale) of any funded debt issued or assumed by the accounting company and retired through sinking or other funds provided from income or surplus. The account shall be kept in such form as to show separately amounts expended to June 30, 1907, and amounts expended since that date.

NOTE A.—Temporary appropriations of current funds for the payment of obligations which are intended to be replaced by new issues shall not be included in this account.

NOTE B.—Amounts of appropriated income and surplus expended in retirement of trust obligations issued for the purchase of equipment shall be included in account No. 779, "Additions to property through income and surplus."

781. SINKING FUND RESERVES.

This account shall include the net balances in accounts to which are credited definite appropriations of income and surplus whether held in general funds or specifically set aside in the hands of trustees for sinking and redemption funds. It shall also include income accretions to such funds retained therein. (See income account No. 552, "Income applied to sinking and other reserve funds.")

782. MISCELLANEOUS FUND RESERVES.

This account shall include the net balances in accounts to which are credited definite appropriations of income and surplus specifically set aside in the hands of trustees and not provided for elsewhere. It shall also include income accretions to such funds retained therein. (See income account No. 552, "Income applied to sinking and other reserve funds.")

783. APPROPRIATED SURPLUS NOT SPECIFICALLY INVESTED.

This account shall include the net balances in accounts to which are credited appropriations of income and surplus held in general funds for definite purposes not provided for elsewhere, but for which no specific investment or segregation of assets has been made.

784. PROFIT AND LOSS—BALANCE.

This account shall include the balance at the close of the fiscal period as shown in the accounts provided in the classification of profit and loss accounts.

FORM OF GENERAL BALANCE SHEET STATEMENT.

EXPLANATORY NOTE.—The classified form of general balance-sheet statement is designed to show the financial condition of the accounting company at any specified date.

ASSET SIDE.

INVESTMENTS:

701. Investment in road and equipment.
702. Improvements on leased railway property.
703. Sinking funds.
    Total book assets at date. (*In short column.*)
    Carrier's own issues at date. (*In short column.*)
    Other assets at date. (*In long column.*)
704. Deposits in lieu of mortgaged property sold.
    Total book assets at date. (*In short column.*)
    Carrier's own issues at date. (*In short column.*)
    Other assets at date. (*In long column.*)
705. Miscellaneous physical property.
706. Investments in affiliated companies—
    (a) Stocks.
    (b) Bonds.
    (c) Notes.
    (d) Advances.
707. Other investments—
    (a) Stocks.
    (b) Bonds.
    (c) Notes.
    (d) Advances.
    (e) Miscellaneous.
    Total.

CURRENT ASSETS:

708. Cash.
709. Demand loans and deposits.
710. Time drafts and deposits.
711. Special deposits.
    Total book assets at date. (*In short column.*)
    Carrier's own issues at date. (*In short column.*)
    Other assets at date. (*In long column.*)
712. Loans and bills receivable.
713. Traffic and car-service balances receivable.
714. Net balance receivable from agents and conductors.
715. Miscellaneous accounts receivable.
716. Material and supplies.
717. Interest and dividends receivable.
718. Rents receivable.
719. Other current assets.
    Total.

DEFERRED ASSETS:

720. Working fund advances.
721. Insurance and other funds.
Total book assets at date. (*In short columns.*)
Carrier's own issues at date. (*In short columns.*)
Other assets at date. (*In long columns.*)
722. Other deferred assets.
Total.

UNADJUSTED DEBITS:

723. Rents and insurance premiums paid in advance.
724. Discount on capital stock.
725. Discount on funded debt.
726. Property abandoned chargeable to operating expenses.
727. Other unadjusted debits.
728. Securities issued or assumed—Unpledged. (*In short column only.*)
729. Securities issued or assumed—Pledged. (*In short column only.*)
Total.

LIABILITY SIDE.

STOCK:

751. Capital stock—
Book liability at date. (*In short column.*)
Held by or for carrier at date. (*In short column.*)
Actually outstanding at date. (*In long column.*)
752. Stock liability for conversion.
753. Premium on capital stock.
Total.

GOVERNMENTAL GRANTS:

754. Grants in aid of construction.

LONG TERM DEBT:

755. Funded debt unmatured—
Book liability at date. (*In short column.*)
Held by or for carrier at date. (*In short column.*)
Actually outstanding at date. (*In long column.*)
756. Receiver's certificates.
757. Nonnegotiable debt to affiliated companies—
(*a*) Notes.
(*b*) Open accounts.
Total.

CURRENT LIABILITIES:

758. Loans and bills payable.
759. Traffic and car-service balances payable.
760. Audited accounts and wages payable.
761. Miscellaneous accounts payable.
762. Interest matured unpaid.
763. Dividends matured unpaid.
764. Funded debt matured unpaid.
765. Unmatured dividends declared.
766. Unmatured interest accrued.
767. Unmatured rents accrued.
768. Other current liabilities.
Total.

DEFERRED LIABILITIES:

769. Liability for provident funds.
770. Other deferred liabilities.
Total.

UNADJUSTED CREDITS:

771. Tax liability.
772. Premium on funded debt.
773. Insurance and casualty reserves.
774. Operating reserves.
775. Accrued depreciation—Road.
776. Accrued depreciation—Equipment.
777. Accrued depreciation—Miscellaneous physicial property.
778. Other unadjusted credits.
Total.

CORPORATE SURPLUS:

779. Additions to property through income and surplus.
780. Funded debt retired through income and surplus.
781. Sinking fund reserves.
782. Miscellaneous fund reserves.
783. Appropriated surplus not specifically invested.
Total appropriated surplus.
784. Profit and loss—Balance.
Total corporate surplus.

Interstate Commerce Commission

Washington

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 20th day of December, A. D. 1920.

Paragraph 9 of section 20 (a) of the Interstate Commerce Act (added February 28, 1920), identifying as short-term notes those having maturity date two years or less from date of issue, being under consideration in connection with the definition of short-term notes in the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, effective July 1, 1914:

It is ordered, That the provisions of the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, effective July 1, 1914, are hereby modified so that notes having maturity date two years or less from date of issue shall be considered short-term notes for the purposes of accounting. References to short-term notes, in the following accounts and instructions and elsewhere in the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, effective July 1, 1914, are amended to conform to this rule:

Special instructions, fourth paragraph of section 3 on page 40.
Account No. 514, "Income from funded securities." Note A.
Account No. 515, "Income from unfunded securities and accounts."
Account No. 546, "Interest on funded debt."
Account No. 547, "Interest on unfunded debt."
Account No. 706 (c), "Investments in affiliated companies—Notes."
Account No. 707 (c), "Other investments—Notes."
Account No. 712, "Loans and bills receivable," and Note A thereto.
Account No. 728, "Securities issued or assumed—Unpledged": Note A.
Account No. 729, "Securities issued or assumed—Pledged": Note A.
Account No. 755, "Funded debt unmatured." Also in subdivision (e) of that account and in Notes A and C thereto.
Account No. 757 (a), "Nonnegotiable debt to affiliated companies—Notes."
Account No. 758, "Loans and bills payable," and in the note to that account.

It is further ordered, That this order shall become effective on January 1, 1921.

By the Commission, Division 4:

GEORGE B. MCGINTY,
Secretary.

26151°—21

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1921

INTERSTATE COMMERCE COMMISSION, WASHINGTON.

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 14th day of March, A. D. 1921.

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads.

The matter of establishing the requirement that the accounts of carriers shall be written up and balanced monthly being under consideration:

It is ordered, That the following instructions are hereby prescribed as section 3 of the general instructions on page 10 of the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, issue of 1914:

3. Accounts shall be written up, posted to the general ledger and balanced monthly. The final entries for any month shall be made not later than 60 days after the last day of the month for which the accounts are stated, except that the period within which the final entries for the month of December shall be made may be extended to such date in the following March as shall not interfere with the preparation and filing of annual reports as required by paragraph 2 of section 20 of the Interstate Commerce Act.

It is further ordered, That this order shall become effective with the accounts for the month of January, 1921.

By the Commission, Division 4.

[SEAL.]

GEORGE B. McGINTY,
Secretary.

38900°—21

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1921

INTERSTATE COMMERCE COMMISSION, WASHINGTON.

In the Matter of a Uniform System of Accounts to Be Kept by Steam Roads.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 19th day of August, A. D. 1921.

The matter of providing in the Uniform System of Accounts for Steam Roads rules for accounting and reporting in connection with capital stock having no par value being under consideration:

It is ordered, That the text of account 751, "Capital stock," as it now appears in the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, effective July 1, 1914, is hereby modified so that said text will read as follows:

751. CAPITAL STOCK.—This account shall include the total value as herein provided of certificates or receipts issued to represent permanent interests in the accounting company, or interests which, if terminable, are so only at the option of the company.

When such certificates or receipts have a par value they shall be included in this account at par value.

When such certificates or receipts have no par value they shall be included in this account at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash. This account shall also include amounts collected when a general levy or assessment is made against the holders of capital stock having no par value.

The amounts included in this account shall be divided so as to show (1) the par value of certificates (pledged or unpledged) held in the company's treasury, by its agents or trustees, or otherwise subject to its control, including both those reacquired after actual issue and those nominally but never actually issued; and (2) the par value (or cash value of consideration received if without par value) of certificates issued and actually outstanding, being those not held by the company, its agents or trustees, or subject to its control.

The amounts included herein shall be further divided so as to show the amount of each class of stock issued, separated as between par value and nonpar value stock, as follows:

(*a*) *Common stock.*—Stocks which have no preference over other issues of stock in distribution of dividends or of assets.

(*b*) *Preferred stock.*—Stocks having preference over other issues of stock in distribution of dividends or of assets.

(*c*) *Debenture stock.*—Stocks issued under a contract to pay a specified return at specified intervals.

(*d*) *Receipts outstanding for installments paid.*—Receipts for payments on account of subscriptions to capital stock. When certificates are issued for amounts so paid, the par value (or cash value of consideration received if without par value) shall be included in the account covering the class of stock for which the certificates are issued.

Each of the above classes shall also be divided into subclasses according to differences in dividend or interest rights, voting rights, or conditions under which the securities may be retired.

NOTE A.—When a general levy or assessment is made against the holders of capital stock, requiring the payment of any sum for the use of the company in addition to the consideration agreed upon at the time of sale, the amount collected upon such levy or assessment in connection with stock having par value shall be credited to the discount and premium account for the subclass of stock on which the assessment is made.

NOTE B.—When stock having par value is exchanged for stock without par value, sums resting in the discount and premium account for the subclass of stock retired shall be cleared to this account to the extent of the premium or discount applicable to the shares retired.

NOTE C.—When stock having no par value is reacquired, this account shall be charged with the amount of the liability resting therein with respect to the reacquired stock. The amount thus charged shall be determined by a prorate of the proceeds realized from shares of the particular subclass of stock of which the shares reacquired are a part actually outstanding immediately prior to the reacquisition. The difference between the amount by which the liability in this account is thus reduced and the amount expended in reacquiring the stock shall be adjusted through profit-and-loss accounts 607, "Miscellaneous credits," or 621, "Miscellaneous debits," as may be appropriate.

NOTE D.—For the purpose of the balance-sheet statement capital stock is considered to be *nominally issued* when certificates are signed and sealed and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the accounting company. It is considered to be *actually issued* when it has been sold to a bona fide purchaser for a valuable consideration, and such purchaser holds it free from all control by the accounting company. All capital stock actually issued and not reacquired and held by or for the accounting company is considered to be *actually outstanding.* If reacquired by or for the accounting company under such circumstances as require it to be considered as held alive and not canceled or retired, it is considered to be *nominally outstanding.*

NOTE E.—With respect to capital stock issued with par value: In the general balance-sheet statement the total capital stock included in the account shall be

shown in the first short column. The amount nominally but not actually issued and the amount nominally outstanding shall be shown in the second short column, and in the long column shall be shown the amount actually outstanding.

NOTE F.—With respect to capital stock issued without par value: An appropriate record shall be maintained of the number of shares *nominally issued, actually issued, actually outstanding,* and *nominally outstanding.* The number of shares in each class shall be duly reported by the accounting company under appropriate schedules in its annual report.

It is further ordered, That the following be added to the text of accounts 728, "Securities issued or assumed—Unpledged," and 729, "Securities issued or assumed—Pledged," as Notes F and G, respectively:

> Stock having no par value and classable either as *nominally issued* or *nominally outstanding* shall be stated by number of shares and duly reported by the accounting company under appropriate schedules in its annual report. (See Note F under account 751, "Capital stock.")

It is further ordered, That this order shall become effective on October 1, 1921.

By the Commission, Division 4.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1921

CLASSIFICATION

OF

INVESTMENT IN ROAD AND EQUIPMENT

OF

STEAM ROADS

PRESCRIBED BY THE

INTERSTATE COMMERCE COMMISSION

IN ACCORDANCE WITH SECTION 20 OF THE ACT TO REGULATE COMMERCE

ISSUE OF 1914

Effective on July 1, 1914

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

THE INTERSTATE COMMERCE COMMISSION.

JAMES S. HARLAN, *of Illinois.*
JUDSON C. CLEMENTS, *of Georgia.*
EDGAR E. CLARK, *of Iowa.*
CHARLES C. MCCHORD, *of Kentucky.*
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GEORGE B. MCGINTY, *Secretary.*

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ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 19th day of May, A. D. 1914.

The subject of a Uniform System of Accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

It is ordered, That the Classification of Investment in Road and Equipment of Steam Roads and the text pertaining thereto, embodied in printed form to be hereafter known as Issue of 1914, a copy of which is now before this Commission, be, and the same is hereby, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Division of Carriers' Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said Classification of Investment in Road and Equipment of Steam Roads with the text pertaining thereto be, and is hereby, prescribed for the use of carriers by rail (exclusive of electric railways) subject to the provisions of the Act to Regulate Commerce as amended, in the keeping and recording of their accounts of investment in road and equipment; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all said accounts in conformity therewith; and that a copy of said issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account established in said issue, or may make assignment of the amount included in any such primary account to operating divisions, to its individual lines, or to States: *Provided, however*, That such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier do not impair the integrity of the accounts hereby prescribed; and *provided also* that a list of such subprimary accounts set up or such assignments made be first filed in the office of the Division of Carriers' Accounts, subject to disapproval by the Commission.

It is further ordered, That in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months ending June 30, 1915, keep and maintain, in addition to the accounts of investment in road and equipment hereby prescribed, such portion or portions of its present accounts with respect to items of investment in road and equipment as may be deemed desirable by any such carrier or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

It is further ordered, That, unless otherwise ordered, any such carrier or any receiver or operating trustee of any such carrier may keep any temporary or experimental accounts for investment the purpose of which shall be to develop economies in construction: *Provided, however*, That such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed.

It is further ordered, That July 1, 1914, be, and is hereby, fixed as the date on which said issue of the Classification of Investment in Road and Equipment shall become effective.

By the Commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

INTRODUCTORY LETTER.

INTERSTATE COMMERCE COMMISSION,
DIVISION OF CARRIERS' ACCOUNTS,
Washington, May 19, 1914.

TO ACCOUNTING OFFICERS OF STEAM RAILWAYS:

This Classification of Investment in Road and Equipment supersedes the Classification of Expenditures for Road and Equipment, First Revised Issue, effective July 1, 1907, with the Supplement thereto, effective July 1, 1908, and also the Classification of Expenditures for Additions and Betterments, First Revised Issue, effective July 1, 1910. It also supersedes conflicting instructions contained in Accounting Bulletin No. 8.

The plan of merging the accounts of expenditures for additions and betterments with the accounts for investment in road and equipment provides that carriers' records shall be kept in such form that the expenditures for additions and betterments may be reported separately from those for original road, original equipment, and road extensions.

Distinct accounts have been provided for the investment in several classes of buildings which, under the former classification, were included in the account "Miscellaneous structures."

The general and special instructions contain a comprehensive statement of the principles underlying the classification, indicating generally the application of the accounting rules. The attention of accounting officers is called to the importance of requiring all employees who are assigned to accounting work in connection with investment in road and equipment to familiarize themselves thoroughly with these instructions.

In the preparation of the revision of the accounting rules contained in this and other classifications for steam roads, which are concurrently issued, the Commission has had the cooperation of the Association of American Railway Accounting Officers, and of its Standing Committee on Corporate, Fiscal, and General Accounts.

The classification, in tentative form, was presented for criticism and suggestions to the chief accounting officer of each railway and

to the railway commissions of the several States. All suggestions received from such parties have been given careful consideration and many of them have been incorporated in the classification as here issued.

FRED W. SWENEY,
Chief Examiner of Accounts

GENERAL INSTRUCTIONS.

The carrier's records shall be kept with sufficient particularity to show fully the facts pertaining to all entries made in the accounts provided herein for investment in road and equipment. Where the full information is not recorded in the general books, the entries therein shall be supported by other records in which the full details shall be shown. Such general book entries shall contain sufficient reference to the detail records to permit ready identification, and the detail records shall be filed in such manner as to be readily accessible for examination by representatives of the Interstate Commerce Commission.

1. ACCOUNTS FOR INVESTMENT IN ROAD AND EQUIPMENT.—The accounts prescribed in this classification are designed to show the investment of the carrier in property devoted to transportation service. The carrier's investment in physical property other than transportation property is provided for in balance-sheet account No. 705, "Miscellaneous physical property." *The carrier* means the accounting carrier, except when otherwise specifically indicated. The carrier's records shall be kept in such form that expenditures for additions and betterments may be reported separately from those for original road, original equipment, and road extensions, and shall show separately the expenditures under each authorized addition and betterment project. (See balance-sheet account No. 701, "Investment in road and equipment," and No. 702, "Improvements on leased railway property.")

2. ITEMS TO BE CHARGED.—To these accounts shall be charged the cost of original road, original equipment, road extensions, additions, and betterments; also the estimated values at time of acquisition of right of way and other road and equipment property donated to the carrier, except that unless authorized by the Commission no charges shall be made to these accounts after July 1, 1914, for donations received previously to that date. Applications to the Commission for including such items in the road and equipment accounts shall contain full information concerning the source and character of the donations.

If the total cost of additions and betterments to any class of equipment, or any class of fixed improvements (except tracks), under a general plan, considered as a whole, is less than $200, the option may be exercised of charging the amount expended to the appropriate account in Operating Expenses. This rule is not to be construed as authorizing the parceling of expenditures in order to bring them within this limit.

Construction includes all processes connected with the acquisition and construction of original road and equipment, road extensions, additions, and betterments.

Original road means the land and fixed improvements provided and arranged for in the original plan for the construction of a new road. When the acquisition of any such fixed improvements under the original plan is deferred, such improvements,

when acquired, shall be considered as additions. Original road shall not be construed to include fixed improvements which, under the original plans for the road, it is proposed to substitute at some time subsequent to the beginning of commercial operations for the improvements originally installed and used for transportation operations, such as steel bridges substituted for trestles.

Original equipment means equipment provided and arranged for under the original plan for the construction of a new road. When the acquisition of such equipment under the original plan is deferred, such equipment, when acquired, shall be considered as additions.

Road extensions means the land and fixed improvements provided and arranged for in the original plan for the construction of extensions of existing main lines, additional branch lines, and extensions of existing branch lines. When the acquisition of any such fixed improvements under the original plan is deferred, such improvements, when acquired, shall be treated as additions. Road extensions shall not be construed to include fixed improvements which under the original plans for the extensions it is proposed to substitute, at some time subsequent to the beginning of commercial operations, for the improvements originally installed and used for transportation in connection with commercial operations, such as steel bridges substituted for trestles.

Equipment means the rolling stock, boats, highway vehicles, horses, and harness devoted to transportation service, the cost of which is includible in the equipment accounts.

Fixed improvements means structures which are fixed as to location, such as tunnels, bridges, buildings, earthworks, etc.

Additions are additional facilities, such as additional equipment, tracks (including timber and mine tracks), buildings, bridges, and other structures; additions to such facilities, such as extensions to tracks, buildings, and other structures; additional ties laid in existing tracks; and additional devices applied to facilities, such as air brakes applied to cars not previously thus equipped. When property, such as a section of road, track, unit of equipment, shop or power plant machine, building, or other structure, is retired from service and replaced with property of like purpose, the newly acquired property shall, for the purpose of this classification, be considered as an addition, and the cost thereof accounted for accordingly. (See section 7.) If, however, the property retired and replaced is of minor importance, such as a small roadway building or other structure, and is replaced in kind without betterment, the cost of the replacement shall be charged to Operating Expenses, and no adjustment made in the road and equipment accounts.

Betterments are improvements of existing facilities through the substitution of superior parts for inferior parts retired, such as the substitution of steel-tired wheels for cast wheels under equipment, the application of heavier rail in tracks, and the strengthening of bridges by the substitution of heavier members. The cost chargeable to the accounts of this classification is the excess cost of new parts over the cost at current prices of new parts of the kind retired. (See section 12.)

Costs shall be actual money costs to the carrier. Where a portion of the funds expended by the carrier has been obtained through donations by States, municipalities, individuals, or others, no deductions on account of such donations shall be made in stating the costs. Contributions for joint expenditures should not be considered as donations. The carrier's proportion only of the cost of joint projects, such as construction of jointly owned tracks and elimination of highway crossings at joint expense, shall be included in these accounts.

3. BASIS OF CHARGES.—The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification is other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual

consideration shall be described in the record in sufficient detail to identify it. The carrier shall be prepared to furnish the Commission, upon demand, the particulars of its determination of the actual cash value of the consideration, if other than money.

4. COST OF CONSTRUCTION.—It is intended that the accounts for fixed improvements and equipment shall include the cost of construction of such property. The cost of construction shall include the cost of labor, materials and supplies, work-train service, special machine service, transportation, contract work, protection from casualties, injuries and damages, privileges, and other analogous elements in connection with such work. The several items of cost here referred to are defined as follows:

(a) *Cost of labor* includes the amount paid for labor expended by the carrier's own employees, including the cost of labor expended for preliminary work, such as sinking test holes or making soundings for tunnels, grading, buildings, and other structures; and cost of labor expended in laying and taking up tracks for temporary use in construction, except the cost of labor expended on tracks provided for the protection of traffic during the progress of addition and betterment work. Office expenses and traveling and other personal expenses of employees, when borne by the carrier, shall be considered a part of the cost of the labor, as shall also the cost of fidelity bonds and employers' liability insurance premiums. When officers or employees are specially assigned to construction work, their pay and their traveling and incidental expenses while thus engaged shall be included in the cost of the work. No charge shall be made against road and equipment accounts for the pay of officers who merely render services incidentally in connection with extensions, additions, or betterments, although traveling and incidental expenses incurred by such officers solely on account of such work shall be included in the account to which the cost of the work is chargeable.

(b) *Cost of materials and supplies* includes the purchase price of materials and supplies, including small tools, at the point of free delivery, plus the costs of inspection and loading assumed by the carrier; also a suitable proportion of store expenses. (See special instructions for operating expense accounts, sections 16 and 17.) In calculating the cost of materials used, proper allowance shall be made for the value of unused portions and of cuttings, turnings, borings, etc.; for the value of the material recovered from temporary tracks, scaffolding, cofferdams, and other temporary structures used in construction; and for the value of small tools recovered and used for other purposes.

(c) *Cost of work-train service* includes amounts paid to others for rent and maintenance of the equipment used; cost of labor of enginemen, trainmen, and engine-house men, including the wages of engine crews and train crews held in readiness for such service; and the cost of fuel and other supplies consumed in connection with the operation of work trains. It shall also include the cost of maintaining the carrier's own equipment while used in construction service and a fair rent for such equipment while so used. Amounts charged for rent of such equipment used in construction shall concurrently be credited to the appropriate income account for hire of equipment. No "rent" or return upon the investment in such equipment shall be charged for the use of equipment acquired with the proceeds of securities sold, when the interest upon such securities is charged to the accounts of this classification.

(d) *Cost of special machine service* includes the cost of labor expended and of materials and supplies consumed in maintaining and operating steam shovels, scrapers, rail unloaders, ballast unloaders, pile drivers, dredges, ditchers, weed burners, and other labor-saving machines; also rents paid for use of such machines. (See Note A under account No. 37, "Roadway machines," and text of general account 11, Equipment, seventh paragraph.)

(e) *Cost of transportation* includes the amounts paid to other companies or individuals for the transportation of men, materials and supplies, special machine outfits, appliances, and tools in connection with construction. Freight charges paid foreign

lines for the transportation of construction material to the carrier's line shall be included, so far as practicable, as a part of the cost of the material, when such charges are borne by the carrier. A fair allowance representing the expense to the carrier of such transportation in transportation service trains over the carrier's own line also shall be included. When the cost of such transportation is not assignable to specific work, it shall be included in account No. 43, "Other expenditures—Road." Amounts thus charged for transportation in transportation service trains over the carrier's line shall be credited to operating expense general account VIII, Transportation for Investment—Cr.

(*f*) *Cost of contract work* includes amounts paid for work performed under contract by other companies, firms, or individuals, and costs incident to the award of the contract.

(*g*) *Cost of protection from casualties* includes expenditures for protection against fire, such as payments for discovery or extinguishment of fires, cost of detecting and prosecuting incendiaries, witness fees in relation thereto, amounts paid to municipal corporations and others for fire protection, and other analogous items of expenditure in connection with construction work.

(*h*) *Cost of injuries and damages* includes expenditures on account of injuries to persons or damage to property when incident to construction projects, and shall be included in the cost of the work in connection with which the injury or damage occurs. It also includes that portion of premiums paid for insuring property applicable to the period prior to the completion or coming into service of the property insured. Insurance recovered on account of compensation paid for injuries to persons incident to construction shall be credited to the accounts to which such compensation is charged, and insurance recovered on account of damages to property incident to construction shall be credited to the accounts chargeable with the expenditures necessary for restoring the damaged property. The cost of injuries and damages incident to the removal of old structures, or parts thereof, shall be charged to Operating Expenses or Profit and Loss, as may be appropriate, except that such costs in connection with the removal of old structures which are incumbrances on newly acquired lands shall be included in account No. 2, "Land for transportation purposes," or No. 3, "Grading," as may be appropriate. (See sections 7 and 8.)

(*i*) *Cost of privileges* includes compensation for temporary privileges, such as the use of public property or streets, in connection with the construction of the property of the carrier.

5. EXCAVATED MATERIAL.—The cost of disposing of material excavated in connection with construction shall be considered as a part of the cost of the work, except that when such material is used for filling, the cost of removal and dumping shall be equitably apportioned between the work in connection with which the removal occurs and the work in connection with which the material is used.

6. ITEMS TO BE CREDITED.—To these accounts shall be credited the ledger value of property retired.

Ledger value of property is the value at which the property is carried in the property investment account in the general ledger of the carrier. In case the value of any item of property is not shown separately in the ledger the ledger value of that item shall be its proportionate share of the value of the entire group in which the particular property is included.

Property retired means property which is sold, abandoned, demolished, or otherwise withdrawn from transportation service.

Salvage from retired property is the value of material recovered from property retired. When such material is retained and again used by the carrier, the value shall be computed upon the basis of fair prices for the material in its condition as recovered. When such material is sold, the net proceeds of the sale shall be considered as the value of the material.

7. PROPERTY RETIRED AND REPLACED.—When a unit of property other than land or equipment—such as a section of road, side or yard track, shop or power plant machine, building, or other structure—is retired from service and replaced with property of like purpose, the ledger value of the retired property shall be credited to the appropriate accounts of this classification at the time that the property is retired from service. The amount of this credit shall be charged concurrently as follows:

An amount equal to the credit balance in the accrued depreciation balance-sheet account with respect to the property thus retired shall be charged to that account and the remainder (less salvage and insurance recovered, if any), together with the cost of demolishing the property, if demolished by or for the carrier, shall be charged to the accounts in Operating Expenses appropriate for the cost of repairs of the property before retirement. The accounting for the salvage shall be in accordance with the disposition made of the material recovered.

If, however, the property retired and replaced with property of like purpose is of minor importance, such as a small roadway building or other small structure, and is replaced in kind without betterment, the cost of the replacement shall be charged to operating expense accounts, and no adjustment made in the road and equipment accounts.

If so authorized by the Interstate Commerce Commission, the carrier may charge to Profit and Loss any extraordinarily large item representing the cost of property retired and replaced, instead of charging such item to Operating Expenses. The carrier shall file with the Commission a statement of the cost and a description of the property retired and the reasons which, in its judgment, indicate the propriety of charging the cost of such property to Profit and Loss.

The provisions of this section are applicable in accounting (at the time of retirement) for the cost of property abandoned, even though the new property has been actually installed previously to the date of the demolishment of the abandoned property.

When the renewals to be made to an important building or other structure will constitute the major portion of its value when renewed, the property, when taken out of service, shall be considered as retired and accounted for as provided above, and for the purposes of this classification the renewed property shall be considered as an addition, and the appraised cost thereof shall be included in the accounts of this classification, consideration being given to the secondhand portions remaining therein. In no case shall the charge for the renewed property exceed the cost (at current market prices of labor and material) of new property of equal capacity and equal expectation of life in service, less a suitable allowance on account of the secondhand parts remaining therein.

8. PROPERTY RETIRED AND NOT REPLACED.—When a unit of property other than land or equipment—such as a section of road, side or yard track, shop or power plant machine, building, or other structure—is retired from service and not replaced, the ledger value shall be credited to the appropriate property accounts at the time that the property is retired from service. The amount of this credit shall be concurrently charged as follows:

An amount equal to the credit balance in the accrued depreciation balance-sheet account with respect to the property thus retired shall be charged to that account, and the remainder (less salvage and insurance recovered, if any), together with the cost of demolishing the property if demolished by or for the account of the carrier, shall be charged to the appropriate profit and loss account. The accounting for the salvage shall be in accordance with the disposition made of the material recovered.

9. EQUIPMENT RETIRED.—The instructions for accounting for equipment retired are contained in the text of the general account II, Equipment.

10. LAND RETIRED.—When any land, the cost of which is included in the accounts of this classification, is retired, the ledger value shall be credited to account No. 2, "Land for transportation purposes." If the land is retained by the carrier, its estimated value shall be charged to balance-sheet account No. 705, "Miscellaneous physical property," the necessary adjustment of the difference between the ledger value and the estimated value on account of the loss in the property due to its retirement from transportation service shall be made through Profit and Loss. If sold, the difference between the ledger value credited to account No. 2 and the amount received for the land shall be adjusted in Profit and Loss.

11. ADJUSTMENTS FOR CONVERTED PROPERTY.—When property, such as a unit of equipment, a building, or other facility of one class, is converted into property of another class, so that the amount of investment in such property must be transferred from one account of this classification to another, the ledger value shall be credited to the appropriate road and equipment account. Proper account shall be taken of any salvage recovered in the process of conversion. The amount of the balance in the accrued depreciation balance-sheet account, with respect to the property thus converted, shall be charged to that account. The appraised cost of the property converted (consideration being given to the secondhand portions remaining therein) shall be included in the appropriate account of this classification. The charge for the converted property in no case shall exceed the cost (at current market prices of labor and material) of new property of equal capacity and equal expectation of life in service, less a suitable allowance on account of the secondhand portions remaining therein. The ledger value of the property before conversion, plus the cost of conversion, less the sum of the estimated value of the property as converted, the amounts charged to accrued depreciation accounts, and the salvage recovered, shall be charged to the operating expense accounts appropriate for the costs of repairs of the fixed improvements or for the retirement of equipment before conversion.

12. EXPENSES IN CONNECTION WITH ADDITIONS AND BETTERMENTS.—The cost of removing old material from equipment and from buildings, bridges, wharves, tracks, and other fixed improvements, shall be charged to the appropriate operating expense accounts. Such charges shall include the cost of removing old foundations and filling old excavations, and restoring condition of grounds after addition and betterment work; rearranging or relocating existing tracks; relocating telegraph and telephone poles or lines, fences, track and other signals, buildings, bridges, trestles, culverts, and other structures, and farm and highway crossings, including crossing gates and alarms, when the provisions of section 8 of these instructions are not applicable; and maintaining or protecting traffic during the progress of addition and betterment work, including the cost of constructing, maintaining, and removing temporary tracks required for maintaining traffic during the progress of the work.

13. INTERPRETATION OF ITEM LISTS.—Lists of "items," "details," etc., have been given as a part of this classification for the purpose of clearly indicating the application of the accounting rules in specific cases. The lists in every case are to be considered as merely representative, and not as excluding from any account analogous items which happen to be omitted from the list appended. On the other hand, the appearance of an item in a list warrants the inclusion of the item in the account concerned only when the text of the account also indicates inclusion, inasmuch as the same item frequently appears in more than one list. The item of boilers, for example, will be found under accounts Nos. 18, 27, 37, 44, and 45, and the proper charge in any one instance must be determined by the text of the account.

14. SUBMISSION OF QUESTIONS.—To the end that uniformity of accounting may be maintained from year to year, carriers shall submit all questions of doubtful interpretation of the accounting rules to the Commission for consideration and decision.

TEXT PERTAINING TO ACCOUNTS FOR INVESTMENT IN ROAD AND EQUIPMENT.

I. ROAD.

The several primary accounts included in this general account are designed to show the cost of land, fixed improvements, and roadway machines and tools owned by the carrier and devoted to transportation service.

1. ENGINEERING.

This account shall include the pay and expenses of engineers, assistants, and clerks engaged in the survey and construction of new lines and extensions, or in making additions to and betterments of the carrier's road, including wharves and docks.

LIST OF OFFICERS AND EMPLOYEES.

(See general instructions, section 13.)

Chief engineer.
Assistant engineers.
Bridge engineer.
Signal engineer.
Architects.
Chief clerk.
Draftsmen.
Clerks.
Transitmen.
Levelmen.
Rodmen.
Chainmen.
Axmen.
Messengers.
Cooks on business cars.
Porters on business cars.

ITEMS OF EXPENSE AND SUPPLIES.

(See general instructions, section 13.).

Atlases and maps.
Axes.
Barometers.
Books for office use.
Boxes for materials and instruments.
Business car service.
Cameras.
Camp equipage.
Chains for surveyors.
Compasses.
Curves.
Drawing boards.
Drawing instruments.
Field glasses.
Field notebooks.
Furniture repairs and renewals.
Hatchets.
Heating and lighting.
Levels.
Magnets.
Magnifiers.
Marking chalk.
Official train service.
Oilstones.
Paper, blue-print.
Parallel rules.
Periodicals and newspapers.
Photographic supplies.
Plane tables.
Planimeters.
Plummets.
Printing and stationery.
Protractors.
Provisions for business cars.
Ranging poles.
Reading glasses.
Rent of offices.
Repairs of rented offices.
Rods for surveyors.
Scales.
Section liners.
Sextants.
Slide rules.
Stakes.
Straightedges.
Tally registers.
Tape lines.
Tee-squares.
Telegraph service.
Telephone service.
Telescopes.
Thermometers.
Thumb tacks.
Tracing linen.
Transits.
Traveling expenses.
Traverse tables.
Triangles.
Tripods.
Verniers.
Water and ice.

NOTE A.—When employees designated above are engaged in the maintenance of the road, their pay and expenses while thus employed shall be charged to Operating Expenses.

NOTE B.—Expenditures for tentative or preliminary surveys shall be carried in a suspense account until it is determined whether or not to continue the work. If the project is continued, expenditures for all surveys in connection therewith shall then be transferred to this account, and, if abandoned, to Operating Expenses, Income, or Profit and Loss, as may be appropriate.

NOTE C.—The cost of designing, making plans and specifications, and supervising the construction of equipment shall be included in the cost of the equipment.

NOTE D.—The cost of stationery and printing supplies used for accounting purposes in connection with engineering work shall be included in account No. 74, "Stationery and printing," when not directly assignable to specific road or equipment accounts.

NOTE E.—Fees and expenses of architects specially employed for designing or supervising the construction of buildings shall be included in the accounts appropriate for the cost of the buildings constructed.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

2. LAND FOR TRANSPORTATION PURPOSES.

This account shall include the cost of land of necessary width acquired for roadway; the cost of land for station, office, shop, and other grounds; for ingress to or egress from such grounds; for borrow pits, waste banks, snow fences, sand fences, and other railway appurtenances; and for storage of material adjoining the right of way; the cost of land for wharves and docks and the cost of riparian or water rights necessary therefor; the cost of removing from the right of way and locating elsewhere the property of others, and the cost of the necessary land for relocation of the property, when such costs are assumed by the accounting carrier.

The carrier's records shall be kept in such manner as to show separately the cost of land purchased by it and the estimated values at time of acquisition of lands donated.

Proceeds from the sale of timber or of improvements purchased with right of way, less any cost of removal, shall be credited to this account.

ITEMS OF EXPENSE.

(See general instructions, section 13.)

Abstracts.
Appraisals.
Arbitrators in condemnation cases.
Commissions paid to others.
Condemnation expenses, including court costs and special counsel fees.
Damages to property of others.
Deferred payments for right of way.
Ditches for waterways when part of consideration.
Judgments and decreed costs to clear or defend titles.
Notarial fees.
Plats.
Premiums on condemnation bonds.
Recording deeds.
Payments for relinquishment of cattle pass and other rights.
Removal and relocation of buildings and other structures not purchased.
Rent of land when part of consideration for purchase.
Right-of-way agents' compensation (engaged solely in acquiring right of way).
Taxes accrued and assumed at time of purchase.

NOTE.—The cost of land acquired in excess of that necessary for transportation operations shall be included in balance-sheet account No. 705, "Miscellaneous physical property." When the purchase of land acquired for transportation operations involves the purchase of land not used for such purposes the charges to this account shall be based upon the estimated cost of only that portion which is used for such purposes, and the cost of the remaining land shall be included in account No. 705, "Miscellaneous physical property."

3. GRADING.

This account shall include the cost of clearing and grading the roadway, and of constructing protection of a permanent character for the roadway, tracks, embankments, and cuts.

When a part of a bridge or trestle, or the entire structure, is converted by filling into an earth embankment, and the bridge is used in lieu of a temporary trestle for the purpose of filling, the estimated cost of such temporary trestle shall be included in the cost of the filling, and charged to this account. (See Note A, under account No. 6, "Bridges, trestles, and culverts.")

When a tunnel is converted into an open cut, the cost of clearing, grubbing, and excavating shall be included in this account.

DETAILS OF ROADBED AND ITEMS OF EXPENSE.

(See general instructions, section 13.)

Advertising for contractors' bids.
Berm ditches.
Blasting.
Breakwaters.
Bulkheading.
Clearing land.
Cribbing.
Ditches (not required by right-of-way agreement).
Dressing slopes.

Excavation for conversion of tunnels into open cuts.
Filling bridges, trestles, and culverts.
Grading outfits.
Grubbing land.
Material taken from borrow pits.
Operation of steam shovels.
Payments for privilege of wasting material on the property of others.
Payments for waste banks off the right of way.
Reconstruction of highways.
Retaining walls.
Revetments.
Riprap.
Spoil banks.
Temporary trestling for fills.
Tools for grading.
Wing dams.

4. UNDERGROUND POWER TUBES.

This account shall include the cost of power tubes or conduits for underground contacts of electric railways or for underground cables of cable traction railways.

DETAILS OF UNDERGROUND CONTACT SYSTEM.

(See general instructions, section 13.)

Concrete work.
Drainpipes.
Manhole covers.
Manhole frames.
Plow pits.
Pulleys.
Sheaves.
Slot rails.
Yokes.

NOTE.—The cost of track rails, other track material, and electric contact rails and insulators shall be charged to the accounts appropriate for such property.

5. TUNNELS AND SUBWAYS.

This account shall include the cost of tunnels and subways for the passage of trains, including apparatus for ventilating and lighting, and safety devices therein, other than signals.

NOTE A.—The cost of tracks, including guard rails, in tunnels shall not be charged to this account.

NOTE B.—Station subways not highway crossings are includible in account No. 16, "Station and office buildings."

NOTE C.—If a tunnel be converted into an open cut, the accounting shall be in accordance with general instructions, section 11.

6. BRIDGES, TRESTLES, AND CULVERTS.

This account shall include the cost of the substructure and superstructure of bridges, trestles, and culverts which carry the tracks of the carrier over watercourses, ravines, public and private highways, and other railways.

DETAILS OF BRIDGE STRUCTURES.

(See general instructions, section 13.)

Abutments.
Bridge signs.
Cofferdams.
Concrete and masonry ends for culverts.
Cribs.
Decking, including gravel for fire protection.
Dike protection.
Drainage systems.
Draw protection.
Drawbridge engines and machinery.
False work.
Guard timbers.
Ice breakers.
Painting (except repainting).
Pier protection.
Piers and foundations.
Pipe culverts.
Retaining walls.
Riprap around abutments.
Riprap at culvert ends.
Supports.
Water channels.
Waterproofing.
Wing dams.
Wing walls.

NOTE A.—When a part or the entire structure of a bridge or trestle is converted, by filling, into an earth embankment, the ledger value of the structure, or of the portion thereof filled, shall be credited to this account. In case the bridge or trestle is used in lieu of a temporary trestle for the purpose of filling, the estimated cost of such temporary trestle shall be charged to account No. 3, "Grading." The ledger value of the structure, or portion thereof, filled, less the value of the salvage and the estimated cost of trestle charged to account No. 3, shall be charged to Operating Expenses.

NOTE B.—The cost of bridges to carry the carrier's tracks over undergrade crossings, including the necessary piers and abutments for sustaining them, shall be included in this account, but the cost of undergrade roadways, paving on right of way, drainage systems, and retaining walls outside of the bridge abutments, shall be included in account No. 16, "Crossings and signs."

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

7. ELEVATED STRUCTURES.

This account shall include the cost of elevated structures and foundations of elevated railway systems.

This account is applicable to structures other than earthwork, which are for the purpose of elevating tracks above the grade of streets, and which are not properly classable as bridges or trestles.

NOTE.—The cost of stations and other structures built on elevated structures shall be accounted for according to the class of the structure thus superimposed, and not in this account.

8. TIES.

This account shall include the cost of cross, switch, bridge, and other track ties used in the construction of tracks for the movement or storage of locomotives and cars (including tracks in shops, fuel stations, supply yards, etc.), and the cost of additional ties subsequently laid in such tracks; also the excess cost of metal ties used in repairs of track over the cost to replace in kind wooden ties removed.

The cost of handling ties in general supply and storage yards shall be included as store expenses apportioned to this account when the ties are used for construction purposes.

NOTE A.—The cost of labor for unloading, distributing, and placing the ties in tracks, and the cost of train service in connection with the distribution of ties laid shall be charged to account No. 12, "Track laying and surfacing."

NOTE B.—The cost of ties used in the construction of car floats shall be included in the cost of such floating equipment, and the cost of ties used in the construction of temporary tracks, such as gravel-pit and quarry tracks, shall be included in the appropriate clearing accounts.

9. RAILS.

This account shall include the cost of rails used in the construction of tracks for the movement or storage of locomotives and cars (including tracks in shops, fuel stations, supply yards, etc.), and the excess cost of heavier rails or rails of improved types or quality used for repairs of tracks over the cost to replace in kind the rails removed.

The cost of handling rails in general supply and storage yards shall be included as store expenses apportioned to this account when the rails are used for construction purposes.

To this account shall be credited the difference between the cost (at current prices at time of removal) of heavy rails removed and the cost of lighter rails applied in the repairs of tracks.

NOTE A.—The cost of labor for unloading, distributing, and placing the rails in tracks, and of train service in connection with the distribution of the rails, shall be charged to account No. 12, "Track laying and surfacing."

NOTE B.—When secondhand rails are first applied to any tracks and no more than the actual cost of such rails is carried in the road accounts, the excess cost of new or heavier rails used for relaying the tracks over the cost (at prices current at the time of replacement) of rails of a weight and condition equal to the weight and condition of the released rails when applied, shall be charged to this account.

NOTE C.—The cost of rails used in the construction of car floats shall be included in the cost of such floating equipment, and the cost of rails used in the construction of temporary tracks, such as gravel-pit and quarry tracks, shall be included in the appropriate clearing accounts.

10. OTHER TRACK MATERIAL.

This account shall include the cost of material used in the construction of tracks for the movement or storage of locomotives and cars (including tracks in shops, fuel stations, supply yards, etc.), except ballast and material chargeable to foregoing accounts; also the excess cost of heavier or improved "other track material" used in repairs of tracks over the cost of replacing in kind such material removed.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

The cost of handling "other track material" in general supply and storage yards shall be included as store expenses apportioned to this account when such material is used in the construction of new tracks.

ITEMS OF OTHER TRACK MATERIAL.

(See general instructions, section 13.)

Angle bars.
Anticreepers.
Bumping posts.
Compromise joints.
Connecting rods.
Crossings for steam and electric railways, including foundations or bases.
Derails.
Frog blocking.
Frogs.
Guard-rail blocking.
Guard-rail clamps.
Guard-rail fasteners.
Guard rails, switch and other.
Main rods.
Nut locks.
Nuts.
Offset bars.
Rail braces.
Rail chairs.
Rail clips.
Rail joints.
Rail rests.
Rail shims.
Rail splices.
Splice bars.
Step chairs.
Switch chairs.
Switch crossings.
Switch lamps.
Switch locks and keys.
Switch points.
Switch stands.
Switch targets.
Switches.
Tie plates.
Tie plugs.
Tie-rods.
Track bolts.
Track insulators.
Track spikes.

NOTE A.—The cost of labor and train service for distributing, unloading, and applying "other track material" shall be charged to account No. 12, "Track laying and surfacing."

NOTE B.—No entry is required in this account with respect to improved "other track material" unless installed under a definite plan of changing standards, such as increasing the weight of rail.

NOTE C.—The cost of "other track material" used in the construction of car floats shall be included in the cost of such floating equipment, and the cost of such track material used in the construction of temporary tracks, such as gravel-pit and quarry tracks, shall be included in the appropriate clearing accounts.

11. BALLAST.

This account shall include the cost of gravel, stone, slag, cinders, sand, and like material used in ballasting tracks (including tracks in shops, fuel stations, supply yards, etc.) not previously ballasted, including cost of work-train service and of unloading; cost of ballast applied in excess of ballast required to restore to its maximum height and width the ballast previously put on the roadbed; and the excess cost of improved ballast used in renewals over the cost to replace in kind to the original height and width the ballast removed. (Special instructions, section 11, for operating expense accounts, apply to the accounting for pits from which ballast material is obtained either for construction work or for maintenance, or for both.)

NOTE A.—The cost of ballast used in the construction of temporary tracks, such as gravel-pit and quarry tracks, shall be included in the appropriate clearing accounts.

NOTE B.—Earth placed to form a crown in the middle of the track is not to be considered as ballast.

NOTE C.—The cost of ballast material placed on the decking of bridges solely for fire-protection purposes shall be included in account No. 6, "Bridges, trestles, and culverts."

NOTE D.—No charge shall be made to the accounts of this classification representing the value of cinders accumulated by the carrier.

12. TRACK LAYING AND SURFACING.

This account shall include the cost of distributing (including train service), laying, and adjusting ties, rails, and other track material used in the construction of tracks for the movement or storage of locomotives or cars, including repair tracks, but not tracks on car floats or temporary tracks the cost of which is chargeable to clearing accounts. It shall also include the cost of the labor expended in placing ballast in tracks not previously ballasted.

NOTE A.—The cost of distributing and adjusting ties, rails, ballast, and other track material for repairs shall be charged to Operating Expenses, both when such materials are replaced in kind and when replaced with improved and heavier material.

NOTE B.—The cost of work-train service in delivering ballast and of unloading such material is provided for in account No. 11, "Ballast."

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

13. RIGHT-OF-WAY FENCES.

This account shall include the cost of right-of-way fences (including permanent snow and sand fences erected in lieu of right-of-way fences), farm gates, cattle guards, wing fences, aprons, and hedges, on property not previously fenced, excluding those around stockyards, fuel stations, station and shop grounds, and building sites.

14. SNOW AND SAND FENCES AND SNOWSHEDS.

This account shall include the cost of snowsheds, including rock filling when necessary, and cost of permanent or portable fences for the protection of tracks from snow and sand, other than such permanent fences erected in lieu of right-of-way fences and chargeable to account No. 13, "Right-of-way fences."

15. CROSSINGS AND SIGNS.

This account shall include the cost of constructing farm passes, highways, and other railways across the carrier's right of way, except railways crossing at grade; cost of track signs, crossing gates, highway-crossing alarms, planking, paving, and watch houses at crossings; and the portion borne by the carrier of cost of overgrade and undergrade crossings constructed to eliminate grade crossings.

DETAILS OF GRADE CROSSINGS.

(See general instructions, section 13.)

Batteries, with track instruments and connections.	Paving.	Warning signals.
Crossing gates.	Planking	Watch houses.
Crossing signal bells.	Soil crossing drains.	Water pipes.

DETAILS OF OVERGRADE CROSSINGS.

(See general instructions, section 13.)

Bridge superstructures.	Drainage systems.	Retaining and wing walls, including foundations.
Bridge substructures.	Piers, including foundations.	
Decking, including roadways.		

DETAILS OF UNDERGRADE CROSSINGS.

(See general instructions, section 13.)

Curbing.	Retaining walls outside of bridge abutments.	Roadways.
Drainage systems.		Sidewalks.
Paving on right of way.		

LIST OF SIGNS.

(See general instructions, section 13.)

Boundary signs.	Section signs.	Water station signs.
Mile signs.	Slow or stop signs.	Water trough signs.
Monument stones.	Subdivision boards.	Whistle signs.
Overhead-bridge caution signs.	Tunnel caution signs.	Yard-limit signs.

NOTE A.—The cost of shop and station overgrade footbridges and subways not public highways shall be included in the cost of the buildings.

NOTE B.—The cost of bridges or trestles carrying the carrier's tracks over roads, highways, or other railways shall be charged to account No. 6, "Bridges, trestles, and culverts," but the cost of a bridge or other structure which carries farm passes, highways, or the tracks of another carrier over the carrier's tracks shall be included in this account.

16. STATION AND OFFICE BUILDINGS.

This account shall include the cost of station and office structures, their fixtures, appurtenances, and furniture necessary first to equip the buildings for use.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

STATION AND OFFICE STRUCTURES AND DETAILS.

(See general instructions, section 13.)

Baggage rooms.
Breakwaters for protection of buildings.
Buildings and rooms for trainman.
Buildings on piers.
Call bells.
Coal bins.
Coal transferring machinery (not on coal and ore wharves).
Coal trestles (not at fuel stations).
Commissarial buildings.
Drainage and sewerage systems.
Dwellings.
Eating houses.
Electric wiring.
Elevators and machinery.
Express buildings.
Fences.
Fire-engine houses.
Freight cranes.
Freight derricks.
Freight handling machinery.
Freight houses.
Garages.
Gas-supply systems.
General office buildings.
Grain cribs.
Grain elevators.
Grain warehouses.
Greenhouses.
Hay houses.
Heating plants.
Hedges.
Hoisting engines, for handling freight.
Hose houses.
Ice houses.
Lighting plants.
Mail cranes.
Milk stands.
Office buildings.
Ore-transferring machinery.
Outhouses.
Pavement within ground limits.
Platforms, freight.
Platforms, passenger, including planking between tracks.
Power distribution systems, interior.
Reading rooms.
Rooms for Y. M. C. A.
Scale houses.
Sidewalks.
Stables.
Station footbridges (not highway crossings).
Station intertrack fences.
Station platforms.
Station signs.
Station stairways.
Station subways (not highway crossings).
Station power houses.
Stations, freight.
Stations, passenger.
Stock pens.
Storehouses.
Telegraph offices.
Telpher systems.
Track scales.
Transfer houses.
Transfer platforms.
Waiting rooms.
Warehouses.
Washrooms.
Water-supply systems.
Yard offices.

NOTE A.—Office buildings used exclusively in connection with maintenance of way shall be included in account No. 17, "Roadway buildings." Those used exclusively in connection with maintenance of equipment shall be included in account No. 20, "Shops and enginehouses."

NOTE B.—The cost of grading and preparing grounds, both before and after the construction of station and office buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

17. ROADWAY BUILDINGS.

This account shall include the cost of roadway shops and other roadway buildings, including drainage, water, gas, and sewer pipes and connections; and all machinery, fixtures, and furniture to equip the buildings ready for use.

LIST OF ROADWAY BUILDINGS.

(See general instructions, section 13.)

Bins for material.
Blacksmith shops.
Boarding houses.
Breakwaters for protection of buildings.
Carpenter shops.
Dwellings.
Fire-engine houses.
Frog shops for repair of track material.
Hand-car houses.
Lighting plants.
Lumber sheds.
Offices.
Outhouses.
Planing mills.
Rail shops for repair of track material.
Repair shops.
Scrap bins.
Section dwelling houses.
Stables.
Storehouses.
Tool houses.
Watch houses.

NOTE.—The cost of grading and preparing grounds both before and after the construction of roadway buildings, and the cost of constructing sidewalks, driveways, and fences thereon shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

18. WATER STATIONS.

This account shall include the cost of structures, facilities, and appliances necessary to equip for service stations for supplying water. The cost of analyses of water preliminary to the establishment of water stations shall be included in this account.

WATER STATION STRUCTURES AND DETAILS.

(See general instructions, section 13.)

Boilers.	Pump houses.	Test wells.
Breakwaters for protection of buildings.	Pumps.	Track tanks.
Buildings on piers.	Purifying plants.	Tubs.
Cisterns.	Reservoirs.	Water cranes.
Dams.	Settling basins.	Water pipe lines.
Fences.	Stationary engines.	Water-treating plants.
Outhouses.	Steam pipes.	Wells.
Penstocks.	Tanks and foundations.	Windmills.

NOTE A.—The cost of water stations used solely for supplying water to shops, power plants, stations, hotels, tenement houses, or section houses shall be charged to the appropriate accounts relating to the property so supplied.

NOTE B.—The cost of a temporary water station established only for use during the construction period shall be included in the primary accounts to which is charged the cost of the work in connection with which the water station is used.

NOTE C.—The cost of grading and preparing grounds both before and after the construction of water station buildings, and the cost of constructing sidewalks, driveways, and fences thereon shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

19. FUEL STATIONS.

This account shall include the cost of structures, facilities other than tracks, and appliances necessary to equip for service stations for supplying fuel to locomotives and floating equipment.

FUEL STATION STRUCTURES AND DETAILS.

(See general instructions, section 13.)

Breakwaters for protection of buildings.	Elevating machinery.	Fuel wharves.
Buckets.	Fences.	Inclines.
Buildings on piers.	Fuel houses or stations.	Outhouses.
Coal buckets.	Fuel-oil columns.	Scales.
Coal buggies.	Fuel-oil plants.	Sheds.
Coal hoists.	Fuel-oil pumps.	Stationary engines.
Coal pockets and chutes.	Fuel-oil sumps.	Tipple cars.
Dumping machinery.	Fuel-oil tanks.	Weighing apparatus.
	Fuel platforms.	Wood racks.

NOTE A.—The cost of fuel stations, coal houses, etc., used solely for supplying fuel to shops, power plants, stations, hotels, tenement houses, or section houses shall be charged to the appropriate accounts relating to the property so supplied.

NOTE B.—The cost of a temporary fuel station established only for use during the construction period shall be included in the primary accounts to which is charged the cost of the work in connection with which the fuel station is used.

NOTE C.—The cost of grading and preparing grounds both before and after the construction of fuel station buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

10. SHOPS AND ENGINEHOUSES.

This account shall include the cost of buildings to be used as shops, enginehouses, and storehouses for material for maintenance of equipment; foundations, except those special to particular machines and other apparatus; furniture and fixtures other than equipment chargeable to account No. 44, "Shop machinery"; drainage, sewerage, and water-supply systems; and plants for heat and light.

SHOP AND ENGINEHOUSE STRUCTURES AND DETAILS.

(See general instructions, section 13.)

Air-compressor houses.	Foundries.	Repair shops.
Ash pits and pockets.	Gas-compressor houses.	Sand houses.
Ash plants.	Heating plants.	Scale houses.
Bins for material.	Hose houses.	Scrap bins.
Blacksmith shops.	Ice houses.	Sidewalks.
Breakwaters for protection of buildings.	Laboratories.	Stables.
	Lighting plants.	Steam-distribution systems, interior.
Buildings on piers.	Lumber sheds.	
Car sheds.	Machine shops.	Storehouses.
Car shops.	Material and supply truck tracks.	Tanks, gas.
Carpenter shops.		Tanks, oil.
Cinder pits.	Motor-crane tracks.	Test rooms.
Cinder pockets.	Offices, shop.	Tin shops.
Drop pits.	Oil houses.	Tool houses.
Dry houses.	Outhouses.	Track scales.
Electric-power distribution systems within buildings.	Paint shops.	Transfer tables.
	Pipe lines, air, interior.	Turntables.
Enginehouses.	Pipe lines, car-heating.	Upholstering shops.
Fire-engine houses.	Pipe lines, gas, interior.	Warehouses.
Footbridges (not public highways).	Planing mills.	Wash rooms.
	Platforms, shop and yard.	Watch houses.

NOTE A.—The cost of distinct power plant buildings for shop purposes shall be included in account No. 29, "Power plant buildings." Cost of distribution systems leading from such power plants to shops and enginehouses shall be included in account No. 32, "Power distribution systems."

NOTE B.—The cost of grading and preparing grounds both before and after the construction of shop and enginehouse buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

NOTE C.—The cost of shop buildings devoted solely to the maintenance of way and structures shall be included in account No. 17, "Roadway buildings."

11. GRAIN ELEVATORS.

This account shall include the cost of structures for the transfer, treatment, and storage of grain, including cost of conveyors, machinery, and fixtures.

The buildings referred to in this account are not small storage elevators at stations where grain is received for shipment, etc., but large elevators in which grain is stored for various owners.

NOTE A.—Small storage elevators at way stations are classed as station buildings.

NOTE B.—The cost of grading and preparing grounds both before and after the construction of grain-elevator buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

22. STORAGE WAREHOUSES.

This account shall include the cost of storage warehouses, including machinery and fixtures therein.

The buildings herein referred to are not the ordinary freight warehouses or stations where freight is received for shipment, etc., but warehouses in which merchandise is stored and which the railway companies or others operate commercially as storage warehouses.

NOTE.—The cost of grading and preparing grounds both before and after the construction of storage warehouse buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

23. WHARVES AND DOCKS.

This account shall include the cost of wharves, docks, dry docks, slips, float bridges, and other landings for vessels, including the cost of necessary dredging, and the cost of float-bridge machinery; also the cost of piling, pile protection, cribs, cofferdams, walls, and other necessary devices and apparatus for the operation or protection of wharves and docks.

DETAILS OF WHARVES AND DOCKS.

(See general instructions, section 13.)

Bridge pontoons.	Ferry-bridge machinery.	Jetties.
Bulkheads.	Ferry bridges.	Jetty inclines.
Caissons.	Ferry racks.	Transfer-bridge machinery.
Cribwork.	Ferry slips.	Transfer bridges.
Dry docks.		

NOTE A.—The cost of coal and ore wharves and docks shall be included in account No. 24, "Coal and ore wharves."

NOTE B.—The cost of the land on which wharves are built and cost of riparian or water rights for wharves and docks shall be charged to account No. 2, "Land for transportation purposes."

NOTE C.—The cost of buildings located on wharves shall be included in the accounts appropriate for the class of building.

NOTE D.—The cost of grading and preparing grounds both before and after the construction of wharves (other than coal and ore wharves) and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the wharves, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the wharves.

24. COAL AND ORE WHARVES.

This account shall include the cost of wharves and docks for the transfer, treatment, blending, or storage of coal or ore, including the cost of necessary dredging and of conveyors, machinery, and fixtures.

NOTE A.—The structures referred to in this account do not include small transfer or storage trestles or wharves at stations where coal is stored or delivered, such trestles being classed as station buildings.

NOTE B.—The cost of grading and preparing grounds both before and after the construction of coal and ore wharves, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the wharves, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the wharves, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the wharves.

25. GAS PRODUCING PLANTS.

This account shall include the cost of gas producing and gas compressing plants, and the cost of machinery and other apparatus in such plants.

NOTE.—The cost of grading and preparing grounds both before and after the construction of gas plant buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be

included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

26. TELEGRAPH AND TELEPHONE LINES.

This account shall include the cost of telegraph and telephone lines, including terminal equipment.

DETAILS OF TELEGRAPH AND TELEPHONE TERMINAL EQUIPMENT.

(See general instructions, section 13.)

Batteries.
Cables and wires, interior.
Conduits, interior.
Connecting wires.
Current-controlling instruments.
Electric generators and motors.
Electric meters.
Engines, stationary.
Fuses and mechanical protectors.
Rectifiers.
Rheostats.
Sending and receiving instruments.
Switchboards.
Testing outfits.
Transformers.

DETAILS OF TELEGRAPH AND TELEPHONE OUTSIDE PLANT.

(See general instructions, section 13.)

Aerial attachments.
Braces.
Brackets.
Cable boxes and appurtenances.
Cables and wires, aerial.
Conduits and appurtenances.
Cross arms.
Guy stubs.
Guy wires.
Insulators.
Poles.
Submarine cables and connections.
Telephone pole boxes.
Towers.
Underground cables and connections.

27. SIGNALS AND INTERLOCKERS.

This account shall include the cost of interlocking and other signal apparatus for governing the movement of trains, including towers and other buildings in connection therewith.

DETAILS OF SIGNALS AND INTERLOCKERS.

(See general instructions, section 13.)

Air compressors.
Batteries.
Boilers.
Distant signals.
Dynamos.
Engines, stationary.
Gates at crossings of other railways.
Home signals.
Interlocker buildings.
Interlocker machinery.
Interlocker mechanism
Levers.
Rail bonds.
Railway-crossing signals.
Relays.
Semaphores.
Signal and switch levers.
Signal arms.
Signal blades.
Signal bridges.
Signal buildings.
Signal lamp brackets and connections.
Signal lamps.
Signal machinery.
Signal poles and foundations.
Signal pulleys and foundations.
Special appliances.
Station signals.
Train-order signals.
Wiring.

NOTE A.—When signal or interlocking apparatus is located in a station building, the entire cost of the building shall be included in account No. 16, "Station and office buildings."

NOTE B.—The cost of grading and preparing grounds both before and after the construction of signal and interlocker buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

28. POWER DAMS, CANALS, AND PIPE LINES.

This account shall include the cost of all dams, canals, pipe lines, and accessories devoted to the utilization of water power for the operation of trains and cars, and to furnish power, heat, and light for general purposes.

DETAILS OF DAMS, CANALS, AND PIPE LINES.

(See general instructions, section 13.)

Aqueducts.	Grids.	Valves.
Bridges.	Inlet valves.	Viaducts.
Fences.	Penstocks.	Walls.
Footbridges.	Reservoirs.	Water rights.
Forebays.	Roadways.	
Gates.	Sluices.	

29. POWER PLANT BUILDINGS.

This account shall include the cost of the buildings of power plants erected to furnish power for the operation of trains and cars, and to furnish power, heat, and light for stations, shops, or general purposes; foundations, except those special to particular machines and other apparatus; drainage, water, and sewer pipes and their connections; fixtures, including wiring for lighting and heating; and miscellaneous furniture and fixtures.

NOTE A.—The cost of power plant machinery and other apparatus shall be included in account No. 45, "Power plant machinery."

NOTE B.—The cost of grading and preparing grounds, both before and after the construction of power plant buildings, and the cost of constructing sidewalks, driveways, and fences thereon shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

30. POWER SUBSTATION BUILDINGS.

This account shall include the cost of the buildings of power substations (including storage-battery stations) erected to transform power for the operation of trains and cars, and for heat, light, and general purposes; foundations, except those special to particular machines and other apparatus; drainage, water, and sewer pipes and their connections; fixtures, including wiring, for lighting and heating; and miscellaneous furniture and fixtures.

NOTE A.—The cost of substation machinery and other apparatus for transforming or storing power in power substations shall be included in account No. 46. "Power substation apparatus."

NOTE B.—The cost of grading and preparing grounds, both before and after the construction of power substation buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

31. POWER TRANSMISSION SYSTEMS.

This account shall include the cost of high-tension transmission systems, whether overhead, surface or underground, used for transferring power from producing plants to a place where it is transformed for propelling trains and cars, or for power, heat, light, and general purposes.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

DETAILS OF POWER TRANSMISSION SYSTEMS.

(See general instructions, section 13.)

Cables.
Cut-outs (not at power houses and substations).
Feed wires.
Guard wires.
Insulators and connections.
Span wires.
Switchboards (not at power houses and substations).
Transformers (not at power houses and substations).

NOTE.—When the electric current generated or received is changed by means of (a) rotary converters, (b) motor generator sets, or (c) static transformers (substation apparatus), that portion of the line or outside conductor system carrying current of other than the operating kind or voltage shall be classed as transmission system. When the electric current is generated or received and used substantially unchanged in voltage and kind, the line or outside conductor system, including any feeders, trolley wires, booster circuits, and supplementary return, shall be classed wholly as distribution system. Tie lines between generating stations and substations shall follow the same rule as other lines.

32. POWER DISTRIBUTION SYSTEMS.

This account shall include the cost of distribution systems, whether overhead, surface, or underground, for conveying low-tension electric power from producing plants or transformer stations and for conveying steam and compressed-air from producing plants to the place where used for propelling trains and cars, or for power, heat, light, and general purposes.

DETAILS OF POWER DISTRIBUTION SYSTEMS.

(See general instructions, section 13.)

Compressed-air pipe lines.
Cut-outs (not at power houses and substations).
Feed wires.
Guard wires.
Insulators and connections.
Overhead trolley wires.
Rail bond plugs.
Rail bonds.
Rail-insulating devices.
Span wires.
Steam pipe lines.
Switchboards (not at power houses and substations).
Third rail.
Third-rail braces.
Third-rail insulation and protection.
Third-rail supports.

NOTE A.—The cost of track material such as insulated rail splices used in connection with distribution systems shall be charged to account No. 10, "Other track material."

NOTE B.—The cost of the portions of distribution systems located within shop buildings and station and office buildings shall be included in the cost of the buildings. The cost of distribution systems in plants used exclusively for operating signals and interlockers shall be included in account No. 27, "Signals and interlockers."

NOTE C.—When the electric current generated or received is changed by means of (a) rotary converters, (b) motor generator sets, or (c) static transformers (substation apparatus), that portion of the line or outside conductor system carrying current of other than the operating kind or voltage shall be classed as transmission system. When the electric current is generated or received and used substantially unchanged in voltage and kind, the line or outside conductor system, including any feeders, trolley wires, booster circuits, and supplementary return, shall be classed wholly as distribution system. Tie lines between generating stations and substations shall follow the same rule as other lines.

33. POWER LINE POLES AND FIXTURES.

This account shall include the cost of poles, cross arms, insulating pins, brackets, and other pole fixtures; braces and other supports for holding the poles in position; and structures for supporting the overhead electric construction.

34. UNDERGROUND CONDUITS.

This account shall include the cost of conduits required for underground wires and cables of electric railway construction, including manholes, sewer connections, sewer traps, and all details necessary for the completion of the conduit system.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

35. MISCELLANEOUS STRUCTURES.

This account shall include the cost of all permanent structures not provided for elsewhere, including all fixtures and furniture to equip them for use.

36. PAVING.

This account shall include the cost of paving about tracks in public highways through which the carrier's tracks are laid.

NOTE.—The cost of paving upon the carrier's lands, within the grounds of buildings or other structures, shall be included in the accounts provided for the cost of the structures. The cost of paving upon the carrier's right of way at crossings shall be included in account No. 15, "Crossings and signs."

37. ROADWAY MACHINES.

This account shall include the cost of the initial outfit of roadway machines provided for the maintenance of roadway and structures at the time the road is opened for commercial traffic, and the cost of additional roadway machines acquired subsequently.

LIST OF ROADWAY MACHINES.

(See general instructions, section 13.)

Boilers, portable.
Cars, hand.
Cars, lever.
Cars, motor inspection.
Cars, push.
Cars, (small), crane, for supply yards and general use.
Concrete mixers.
Ditching machines.
Dredging machines.
Engines, portable.
Grading outfits.
Hydraulic outfits.
Jacks, hydraulic.
Log loaders.
Pile drivers.
Plows, unloading.
Rail unloaders.
Rock crushers.
Steam rollers.
Timber trucks.
Velocipedes.

NOTE A.—When an important addition and betterment project or the construction of a new line necessitates the purchase of roadway machines to be used exclusively thereon, the cost shall be included in the accounts to which the cost of the work is charged. The amount realized from any subsequent sale, or the appraised value of the machines retained after the completion of the special work for which they were purchased, shall be credited to the accounts charged with the cost thereof. The appraised value of such machines retained shall be debited to this account and thereafter considered as the cost of such property.

NOTE B.—The cost of machines for the equipment of roadway shops shall be included in account No. 17, "Roadway buildings," as provided for therein.

NOTE C.—The cost of roadway machines, such as pile drivers, log loaders, hoist engines, and concrete mixers, when permanently mounted for movement on the carrier's tracks, shall be included in account No. 57, "Work equipment."

38. ROADWAY SMALL TOOLS.

This account shall include the cost of the initial outfit of roadway and track small tools provided for the maintenance of way and structures at the time the road is opened for commercial traffic; also the initial outfit of such tools provided for the maintenance of extensions of such road.

LIST OF ROADWAY TOOLS.

(See general instructions, section 13.)

Adzes.
Anvils.
Augers.
Axes.
Ballast forks.
Bars, claw.
Bars, crow.
Bars, lining.
Bars, pinch.
Bars, raising.
Bars, tamping.
Braces and bits.
Brooms.
Brush hooks.
Cable stretchers.
Cables.
Cans, oil.
Cans, water.
Cant hooks.
Chains.
Chisels, track.
Chisels, wood.
Curbing hooks.
Dippers.
Drawing knives.
Drill bits.
Drills, portable.
Flags, signal.
Furnaces, portable.
Grindstones.
Hammers, napping.
Hammers, paving.
Hammers, spiking.

Handles for tools.
Hatchets.
Hoes.
Jack levers.
Jacks, ratchet.
Jacks, screw.
Jacks, track.
Kegs, water.
Ladders.
Lanterns and fixtures.
Lawn mowers.
Levels.
Lines for ditching.
Nippers.
Oilstones.
Padlocks.
Pails, water.
Paint brushes.
Picks, clay.
Picks, tamping.
Pike poles.
Post-hole diggers.
Post-hole tampers.
Punches.
Rail benders.
Rail tongs.
Rakes.
Rope.
Saws, crosscut.
Saws, hand.
Scrap boxes.
Scythes.
Shovels.
Sickles.
Sledges.
Spades.
Spike mauls.
Spike pullers.
Spot boards.
Squares.
Straightening machines.
Tape lines.
Thermometers for laying rail
Tongs.
Tool boxes.
Torches.
Track gauges.
Track levels.
Vises.
Weed spuds.
Wheelbarrows.
Whetstones.
Wood mallets.
Wrenches, monkey.
Wrenches, track.

NOTE.—The cost of roadway and track small tools of which no specific record is kept shall be charged when acquired to an appropriate materials and supplies account, from which they shall be charged as issued to the appropriate road and equipment, operating expense, or other accounts. When such tools are used both for construction and maintenance work the cost shall be equitably apportioned among the accounts provided for the two classes of work.

39. ASSESSMENTS FOR PUBLIC IMPROVEMENTS.

This account shall include the carrier's proportion of the cost of constructing public improvements—such as grading, sewering, curbing, guttering, paving, and sidewalks—and other public improvements, including the cost of such improvements if made by the carrier's own employees under Government requirements.

NOTE A.—The cost of paving required by Government authority between rails and adjacent to tracks laid through public highways shall be included in account No. 36, "Paving."

NOTE B.—The carrier's proportion of the cost of maintaining such public improvements shall be included in operating expenses.

40. REVENUES AND OPERATING EXPENSES DURING CONSTRUCTION.

This account shall include the cost of operating a piece of road during the period before the regular operation of revenue trains, including rent and repairs of equipment used in commercial service during such period. It includes the cost of running construction trains over such section of road when the cost of operating such trains can not properly be charged to any specific account.

To this account shall be credited amounts collected for rents of buildings and other properties and for the transportation of commercial freight or of passengers on construction trains; also the net profits from boarding and commissarial outfits, and other sources of operating revenue.

Carriers which wish to subdivide this account shall use appropriate subaccounts corresponding to accounts prescribed in the operating revenue, operating expense, or income account classifications.

41. COST OF ROAD PURCHASED.

This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis. If the consideration includes the

assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made.

This account shall be used only as a clearing account in which temporarily to carry the cost of road purchased until such time as a plan for distributing such cost to the primary accounts appropriate for the property is approved by the Commission.

NOTE A.—The appraised value of any equipment thus acquired shall be charged to the appropriate equipment accounts. The value, at time of purchase, of any securities, or other assets acquired, shall be included in the accounts appropriate for such assets. The par value of any liabilities assumed shall be included in the appropriate liability accounts, and the necessary adjustments between the cash value charged to the property accounts and the par value shall be made in the appropriate premium or discount account.

NOTE B.—The carrier shall be prepared to furnish the Commission, upon demand, a full report of the contract of acquisition of each road, or portion thereof, purchased, and a statement showing in detail the consideration given therefor. It should procure, in connection with the acquisition of any such road and equipment, all existing records, memoranda, and accounts in possession or control of the grantor, relating to the construction and improvements of such road and equipment, and shall preserve such records, memoranda, and accounts until authorized by law to destroy or otherwise dispose of them. Where the records, memoranda, and accounts are so intimately involved with other records, memoranda, and accounts of the grantor as to make their transfer impracticable or inadvisable, certified copies of them shall be procured and retained by the grantee. The verity of the copies should be certified by the custodian of the originals.

42. RECONSTRUCTION OF ROAD PURCHASED.

When a road is purchased and the fixed improvements acquired are in such a physical condition that it is necessary substantially to rebuild the road in order to bring it up to the standard required by the carrier, the cost of such rebuilding shall be charged to this account.

NOTE A.—A comprehensive statement of the estimated amount necessary to reconstruct a road in accordance with the above provision shall be made to the Commission as soon as the estimate is made.

NOTE B.—When the work of reconstruction of road purchased is completed, the cost thereof shall be credited to this account and charged to other primary accounts of this classification appropriate for the expenditures made.

43. OTHER EXPENDITURES—ROAD.

This account shall include items which can not properly be included in any of the foregoing accounts as a part of the cost of any specific work, such as the cost of transportation of men, materials, supplies, and equipment over the carrier's own line; amounts paid for rent and repairs of equipment and for injuries to persons incident to and in connection with original road, road extensions, or additions and betterments; and analogous items. When assignable, such expenditures shall be included in the cost of the property in connection with which the expenditure occurs.

NOTE.—Rents paid for and repairs made to equipment used in commercial operations during the period before the regular operation of revenue trains shall be charged to account No. 40, "Revenues and operating expenses during construction."

44. SHOP MACHINERY.

This account shall include the cost of machinery and other apparatus in shops and enginehouses, including the cost of special foundations and installation, and cost of small hand tools necessary first to equip a shop.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

LIST OF SHOP MACHINERY.

(See general instructions, section 13.)

Air compressors.
Ash conveyors.
Belting.
Blowers.
Boilers for furnishing power.
Boring machines.
Cars, motor.
Cars, push.
Cranes.
Drill presses.
Drilling machines.
Drop tables.
Forges.
Framing machines.
Furnaces.
Grinding and polishing machines.
Hoists.
Hydraulic jacks.
Lathes.
Lifting magnets.
Metal chimneys.
Milling machines.
Motors.
Pipe cutting and threading machines.
Planers.
Pneumatic hammers.
Power equipment.
Punches.
Riveters.
Saws.
Shafting.
Shapers.
Slotters.
Stationary engines.
Steam hammers.
Vises.
Welding machines.
Woodworking machines

NOTE A.—The cost of power plant machinery and other apparatus for shop purposes, when located in distinct buildings, shall be included in account No. 45, "Power plant machinery."

NOTE B.—The cost of foundations other than those special to particular machines and other apparatus shall be included in the cost of the building, and not in this account.

45. POWER PLANT MACHINERY.

This account shall include the cost of machinery and other apparatus for generating power in power plants used for the operation of trains and cars, or to furnish power, heat, and light for stations, shops, or general purposes, including the cost of special foundations and installation.

DETAILS OF POWER PLANT MACHINERY.

(See general instructions, section 13.)

Ammeters.
Batteries.
Belting.
Boiler-room appliances and tools.
Boilers and fittings.
Boosters.
Cables.
Circuit breakers.
Clutches.
Conductors.
Cranes.
Cut-outs.
Draft machinery.
Dynamos.
Economizers.
Electric-power distribution systems, interior.
Engine-room appliances and tools.
Feed-water heaters.
Furnaces.
Generators.
Globes.
Hangers.
Heating apparatus.
Hoists.
Insulators.
Lamps.
Lighting apparatus.
Lubricating devices.
Machinery and foundations.
Mechanical stokers.
Piping.
Poles.
Pumps.
Purifiers.
Rheostats.
Sewer connections.
Shafting.
Stationary engines.
Steam distribution systems.
Steam fittings.
Switchboards.
Tanks.
Transformers.
Turbines.
Voltmeters.
Water meters.
Water wheels.
Wires from generators or transformers to switchboard.

NOTE A.—The cost of power machinery and other apparatus installed in a shop as part of the shop equipment shall be included in account No. 44, "Shop machinery."

NOTE B.—The cost of power machinery and other apparatus installed in stations and offices and used solely for station and office purposes shall be included in account No. 16, "Station and office buildings."

NOTE C.—The cost of power machinery and other apparatus in plants used solely for operating signals and interlockers shall be included in account No. 27, "Signals and interlockers."

NOTE D.—The cost of foundations other than those special to particular machines and other apparatus shall be included in the cost of the building, and not in this account.

46. POWER SUBSTATION APPARATUS.

This account shall include the cost of machinery and other apparatus, including the cost of special foundations and installation, for transforming or storing

power in power substations used for the operation of trains and cars, and for power, heat, and light for stations, shops, or general purposes.

DETAILS OF POWER SUBSTATION APPARATUS.

(See general instructions, section 13.)

Rotary converters.	Switchboards.
Storage batteries.	Transformers.

NOTE A.—The cost of constructing machinery and other apparatus for transforming or storing power shall be included in account No. 45, "Power plant machinery," when such equipment is contained in a power plant.

NOTE B.—The cost of foundations other than those special to particular machines and other apparatus shall be included in the cost of the building, and not in this account.

47. UNAPPLIED CONSTRUCTION MATERIAL AND SUPPLIES.

This account shall include the cost of material and supplies located at the point of use which have been purchased for projected new roads and road extensions.

The purpose of this account is to exclude from the current assets the cost of supplies and unapplied material which are located for use on projected new roads and road extensions, under the condition that the material will not be used for other purposes.

NOTE A.—Material and supplies designed for projected new roads and road extensions which are carried in storehouses and store yards and included in the general stock of an operating company shall be included in balance-sheet account No. 716, "Materials and supplies."

NOTE B.—The cost of unapplied materials and supplies on hand at the completion of construction work shall be transferred to balance-sheet account No. 716, "Materials and supplies."

II. EQUIPMENT.

The several primary accounts included in this general account are designed to show the cost of the several classes of equipment owned by the carrier, or held under equipment trust agreements for purchase.

To the appropriate primary accounts in this general account shall be charged the cost of all equipment, such as steam locomotives, electric locomotives, passenger-train cars, freight-train cars, work equipment, floating equipment, and the necessary appurtenances, furniture, and fixtures first to equip for service, including the cost of inspection, setting up, and trying out, and transportation over foreign lines; also the cost of additions, such as headlights, mechanical stokers, power brakes, vestibules, machinery for self-propulsion, heating and lighting apparatus, and the like; and the excess cost of betterments, such as improved appliances, parts, or appurtenances, over the cost at current prices (as new) of the appliances, parts, or appurtenances removed. The cost of removing the old appliances and applying the improved shall be charged to Operating Expenses.

The ledger value of each unit of equipment shall be credited to the appropriate equipment account when it is retired from service. The amount of this credit shall be concurrently charged as follows:

The amount of the balance in the balance-sheet accrued depreciation account with respect to the equipment thus retired shall be charged to that account; the salvage recovered shall be charged to the materials and supplies account or elsewhere, according to the purpose for which used; the amount of depreciation prior to July 1, 1907, not previously written off or provided for, shall be charged to Profit and Loss; and the remainder shall be charged to the appropriate operating expense account for equipment retired. The cost of demolishing the equipment, if demolished by or for the carrier, shall be charged to the appropriate operating expense account for equipment retirements.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

When the cost of the renewals to be made to any unit of equipment will constitute the major portion of its value as renewed, the equipment, when taken out of service, shall be considered as retired and accounted for as provided in the preceding paragraph, and for the purpose of this classification the renewed equipment shall be considered an addition and the appraised cost thereof shall be included in the account appropriate for the cost of the equipment. In no case shall the charge for the renewed equipment exceed the cost (at current market prices of labor and material) of new equipment of similar type, equal capacity, and equal expectation of life in service, less a suitable allowance on account of the secondhand parts remaining therein.

When equipment of one class is converted so as to be includible in another class, the accounting shall be as provided in general instructions, section 11.

When an important addition and betterment project or the construction of new lines necessitates the purchase of equipment to be used exclusively therein, the cost of such equipment shall be included in the accounts representing the cost of the work, and no charge shall be made to Operating Expenses for depreciation on such equipment while the cost remains so charged. The amount realized from any subsequent sale, or the appraised value of the equipment retained after the completion of the special work for which it was purchased, shall be credited to the accounts charged with its cost. The appraised value of such equipment retained shall be debited to the appropriate primary account herein, and thereafter, for the purposes of accounting, such appraised value shall be considered as the cost of the equipment.

When secondhand equipment acquired is in such physical condition that it is necessary to make extensive repairs to it to bring it up to the standard required by the carrier, the cost of such repairs shall be included in the account appropriate for the cost of the equipment. A comprehensive statement of the amount estimated to be necessary to rebuild secondhand equipment in accordance with the above provision shall be furnished to the Commission as soon as the estimate is made.

51 STEAM LOCOMOTIVES.

This account shall include the cost of steam locomotives and tenders, purchased or built by the carrier, and of appurtenances, furniture, and fixtures necessary to equip them for service, including the cost of inspection, setting up, and trying out after receipt from builders, and transportation charges to the carrier's line.

LIST OF APPURTENANCES TO LOCOMOTIVES.

(See general instructions, section 13.)

Air-brake equipment and hose.	Coal boards.	Signal lamps.
Arm rests.	Fire-extinguishing apparatus.	Speed recorders.
Awnings.	Gongs.	Steam-gauge lamps.
Brake fixtures.	Head lamps.	Steam-heat equipment and hose.
Cab cushions.	Metallic packing.	Storm doors.
Cab lamps.	Pneumatic sanding equipment.	Tool boxes.
Clocks.	Seat boxes.	Train-signal equipment and hose.

52 OTHER LOCOMOTIVES.

This account shall include the cost of locomotives other than steam, purchased or built by the carrier, and of appurtenances, furniture, and fixtures necessary to equip them for service, including inspection, setting up, and trying out after receipt from builders, and transportation charges to the carrier's line.

NOTE.—Cars with motor equipment are not to be classed as locomotives.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

53. FREIGHT-TRAIN CARS.

This account shall include the cost of freight-train cars of all classes, including motor-driven cars, purchased or built by the carrier, including all appurtenances, furniture, and fixtures necessary to equip them for service, and the cost of inspection and transportation charges to the carrier's line.

LIST OF FREIGHT-TRAIN CARS.

(See general instructions, section 13.)

Ballast (commercial).	Fruit.	Ore.
Beer.	Furniture.	Platform.
Box.	Gondola.	Poling.
Cabin.	Gondola (hopper).	Poultry.
Caboose.	Gondola (long).	Produce.
Charcoal.	Gun truck.	Rack.
Coal.	Hay.	Refrigerator.
Coke.	Lime.	Stock.
Dump (commercial).	Logging.	Tank and water (when used as commercial cars).
Flat.	Oil tank.	

LIST OF APPURTENANCES TO FREIGHT-TRAIN CARS.

(See general instructions, section 13.)

Air-brake equipment, including hose.	Heating equipment.	Speed recorders.
Cooking equipment and utensils.	Ice boxes.	Train-signal equipment, including hose.
Cushions.	Lamps and fixtures.	Water tanks.
	Seats.	

NOTE.—The cost of motor equipment of cars shall be included in account No. 55, "Motor equipment of cars."

54. PASSENGER-TRAIN CARS.

This account shall include the cost of passenger-train cars of all classes, including motor-driven cars, purchased or built by the carrier, including all appurtenances, furniture, and fixtures necessary to equip them for service, and cost of inspection and transportation charges to the carrier's line.

LIST OF PASSENGER-TRAIN CARS.

(See general instructions, section 13.)

Baggage.	Dining.	Passenger.
Baggage-express.	Express.	Passenger-baggage.
Baggage-mail.	Immigrant.	Passenger-baggage-mail.
Baggage-mail-express.	Library.	Postal.
Buffet.	Mail.	Refrigerator-express.
Café.	Milk.	Sleeping.
Chair.	Observation.	Smoking.
Club.	Parlor.	Tourist.
Colonist.	Parlor-baggage.	

LIST OF APPURTENANCES TO PASSENGER-TRAIN CARS.

(See general instructions, section 13.)

Air-brake equipment, including hose.	Ice boxes.	Steam-heat hose.
Bedding.	Ice tanks.	Table china.
Chairs.	Kitchen equipment and utensils.	Table glassware.
Coat hooks.	Lighting equipment.	Table linen.
Curtains and fixtures.	Mail catchers.	Table silver.
Cushions.	Parcel racks.	Toilet equipment.
Electric bells.	Ranges and boilers.	Train-signal equipment, including hose.
Floor coverings.	Seats.	Water tanks.
Heating equipment.	Speed recorders.	

NOTE.—The cost of motor equipment of cars shall be included in account No. 55, "Motor equipment of cars."

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

55. MOTOR EQUIPMENT OF CARS.

This account shall include the cost of motor equipment of all cars, including the wiring for such electric equipment.

DETAILS OF MOTOR EQUIPMENT.

(See general instructions, section 13.)

Batteries, storage.	Lightning arresters.	Third-rail contact.
Circuit breakers.	Motors.	Trolley poles.
Controllers.	Overload switches.	Trolleys.
Engines, internal-combustion.	Rheostats.	
Generators.	Switches.	

56. FLOATING EQUIPMENT.

This account shall include the cost of marine or floating equipment of all kinds except work equipment, purchased or built by the carrier, including all appurtenances, furniture, and fixtures necessary to equip it for service, and cost of inspection and transportation charges to the carrier's line.

LIST OF FLOATING EQUIPMENT.

(See general instructions, section 13.)

Barges.	Lighters.	Steamboats.
Canal boats.	Power launches.	Steamships.
Car and other floats.	Power lighters.	Transfer boats.
Ferryboats.	Scows.	Tugboats.

LIST OF APPURTENANCES TO FLOATING EQUIPMENT.

(See general instructions, section 13.)

Anchors.	Flue cleaners.	Racks.
Axes.	Furniture.	Railings.
Barometers.	Gangplanks.	Rakes.
Beds and bedding.	Hatchets.	Rigging.
Binnacle lamps.	Heating equipment.	Safes.
Blocks and tackle.	Hoisting equipment.	Sails.
Boilers and foundations.	Hooks.	Scales.
Cables.	Keys.	Seats, chairs, and cushions.
Capstan bars.	Kitchen equipment.	Shovels.
Carpets.	Life preservers.	Slice bars and pokers.
Charts.	Lighting equipment.	Spyglasses.
China, crockery, and glassware.	Linen.	Steam distribution systems.
Chronometers.	Lines.	Steering equipment.
Clocks.	Logs.	Telescopes.
Compasses.	Machinery and foundations.	Ticket cases.
Counters.	Masts.	Tool boxes.
Desks.	Oil cans.	Tools, miscellaneous.
Engines and foundations.	Pianos and other musical instruments.	Tracks on car floats.
Fire buckets.	Pumps.	Ventilating equipment.
Fire extinguishers.		Wrenches.
Floor coverings.		

57. WORK EQUIPMENT.

This account shall include the cost of work equipment, including motor-driven equipment, purchased or built by the carrier; cost of appurtenances, furniture, and fixtures necessary to equip it for service, and cost of inspection and transportation charges to the carrier's line.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

LIST OF RAIL WORK EQUIPMENT.

(See general instructions, section 13.)

Air-brake instruction cars.	Grading cars.	Scraper cars.
Ballast cars.	Gravel cars.	Snow dozers.
Ballast unloader cars.	Indicator cars.	Snow drags.
Boarding cars.	Locomotive tanks used permanently as water cars.	Snow plows (moved by but not attached to locomotives).
Bridge cars.	Locomotives.	Sprinkling cars.
Business cars.	Officers' cars.	Steam shovels.
Camp cars.	Outfit cars.	Steam wrecking derricks.
Cinder cars.	Painters' cars.	Supply cars.
Concrete mixers (mounted).	Pay cars.	Sweeper cars.
Derrick cars.	Pile drivers (mounted).	Tool cars.
Dirt spreaders (mounted).	Rail saws (mounted).	Tool and block cars.
Ditching cars.	Salt cars.	Water cars.
Dump cars.	Sanding cars.	Weed burners (mounted).
Dynamometer cars.	Scale test cars.	Wrecking cars.
Gas tank cars.		

LIST OF FLOATING WORK EQUIPMENT.

(See general instructions, section 13.)

Derricks.	Dredges.	Pile drivers.

APPURTENANCES TO FLOATING WORK EQUIPMENT.

(See general instructions, section 13.)

Anchors.	Floor coverings.	Oil cans.
Axes.	Flue cleaners.	Pumps.
Barometers.	Gangplanks.	Rakes.
Beds and bedding.	Hatchets.	Rigging.
Blocks and tackle.	Heating equipment.	Sails.
Boilers and foundations.	Hoisting equipment.	Seats and chairs.
Cables.	Hooks.	Shovels.
China, crockery, and glassware.	Keys.	Slice bars and pokers.
Compasses.	Life preservers.	Steam distribution systems.
Cushions.	Lighting equipment.	Steering equipment.
Desks.	Linen.	Tool boxes.
Engines and foundations.	Lines.	Tools, miscellaneous.
Fire extinguishers.	Machinery and foundations.	Wrenches.
Fire buckets.	Masts.	

NOTE.—The cost of motor equipment of cars shall be included in account No. 55, "Motor equipment of cars."

58. MISCELLANEOUS EQUIPMENT.

This account shall include the cost of horses and harness; and cost of wagons, automobiles, and other highway vehicles.

III. GENERAL EXPENDITURES.

The primary accounts of this general account are designed to include expenditures made in connection with the acquisition and construction of original road and equipment, and with extensions, additions, and betterments to road and equipment property, when such expenditures can not properly be included in any of the foregoing accounts as a part of the cost of any specific work. When assignable, such expenditures shall be included in the cost of the property in connection with which the expenditures occur.

71. ORGANIZATION EXPENSES.

This account shall include all fees paid to governments for the privilege of incorporation, and office and other expenditures incident to organizing the corporation and putting it in readiness to do business; cost of preparing and distrib-

uting prospectuses; cost of soliciting subscriptions for stock; cash fees paid to promoters, and the actual cash value (at the time of the organization) of securities paid to promoters for their services in organizing the enterprise; special counsel fees; cost of preparing and issuing certificates of stock; cost of procuring the necessary certificates from State authorities; and other like costs.

NOTE.—Cost of soliciting for loans or for the sale of bonds or other evidences of indebtedness shall be charged to balance-sheet account No. 725, "Discount on funded debt."

72. GENERAL OFFICERS AND CLERKS.

This account shall include the pay and expenses of executive and general officers and of general office clerks engaged exclusively in connection with the construction of new road and extensions.

NOTE.—The salaries and expenses of executive and general officers and of general office clerks engaged in connection with the conduct of commercial operations during the period before the regular operation of revenue trains shall be included in account No. 40, "Revenues and operating expenses during construction."

73. LAW.

This account shall include specific and distinct expenditures, not provided for elsewhere, for law service in connection with the acquisition of new road, road extensions, additions, and betterments, such as pay and expenses of counsel, solicitors, and attorneys, their clerks and attendants, and expenses of their offices.

ITEMS OF EXPENSE.

(See general instructions, section 13.)

Arbitrators' services in settlement of disputed questions.
Cost of taking depositions.
Cost of testimony.
Costs of suits.
Court bonds.
Court expenses.
Express charges.
Fees and retainers of attorneys not regularly employed.
Law books.
Legal forms.
Legal reports.
Notarial fees not provided for elsewhere.
Office expenses.
Printing of briefs, testimony, etc.
Rent of offices.
Special fees.
Telegraph service.
Telephone service.
Traveling expenses.
Witness fees not provided for elsewhere.

NOTE.—Court costs and special counsel fees in connection with the acquisition of land for transportation operations shall be included in account No. 2, "Land for transportation purposes."

74. STATIONERY AND PRINTING.

This account shall include the cost of stationery, stationery supplies, postage, office devices, and printed matter used by any class of employees in connection with construction and not provided for elsewhere.

ITEMS OF STATIONERY AND PRINTING.

(See general instructions, section 13.)

Adding machines.
Addressographs and supplies.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cross-section books.
Cross-section paper.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Drawing paper
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes.
Forms, blank and printed.
Fuel tickets.
Glass pens.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

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Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Parchment paper.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Time-tables.
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Waybills.
Wrapping paper.
Wringers for copying presses.

NOTE A.—The cost of printing bonds, etc., in connection with the carrier's funded debt shall be included in balance-sheet account No. 725, "Discount on funded debt."

NOTE B.—The cost of stationery and printing, when assignable, shall be included in the cost of the property in connection with the acquirement or construction of which the expenditure occurs.

75 TAXES.

This account shall include State, county, township, city, school, road, annual franchise, and all other taxes and assessments levied and paid on property belonging to the carrier during construction and before the facilities are used for commercial operations, except special assessments for street and other improvements chargeable to account No. 36, "Paving," or No. 39, "Assessments for public improvements."

NOTE.—Taxes during construction, when assignable shall be included in the cost of the property acquired or constructed.

76 INTEREST DURING CONSTRUCTION.

When any bonds, notes, or other evidences of indebtedness are sold, or any interest-bearing debt is incurred for acquisition and construction of original road and equipment, extensions, additions, and betterments, the interest accruing on the part of the debt representing the cost of property chargeable to road and equipment accounts (less interest, if any, allowed by depositaries on unexpended balances) after such funds become available for use and before the receipt or the completion or coming into service of the property so acquired shall be charged to this account.

When such securities are sold at a premium the proportion of such premium assignable to the time between the date of the actual issuance of the securities and the time when the property acquired or the improvement made becomes available for service shall be credited to this account.

This account shall also include such proportion of the discount and expense on funded debt issued for the acquisition of original road, original equipment, road extensions, additions, and betterments, as is equitably assignable to the period between the date of the actual issuance of securities and the time when the property acquired or the improvement made becomes available for the service

for which it is intended. The proportion of discount and expense thus chargeable shall be determined by the ratio between the period prior to the completion or coming into service of the facilities or improvements acquired and the period of the entire life of the securities issued.

This account shall also include reasonable charges for interest, during the construction period before the property becomes available for service, on the carrier's own funds expended for construction purposes.

NOTE A.—Interest on bonds, notes, or other evidences of indebtedness accruing before the proceeds from the sale of the securities become available for use shall not be included in this account, nor shall there be included any interest accruing after the property with respect to which the proceeds are expended is received or becomes available for use in connection with commercial service.

NOTE B.—If any securities which have been issued or assumed by the carrier are sold or exchanged by or for the carrier for a consideration the actual money value of which at the time of such sale or exchange is less than the value of the securities at par and the accrued interest thereon, if any, the difference between the money value of the consideration received and the par value of the securities plus the accrued interest shall be deemed a discount. In no case (except as provided in the third and fourth paragraphs of this account) shall discounts be included as part of the cost of anything charged to any account prescribed in this classification.

NOTE C.—For definition of securities *actually issued*, see Note B, under general balance-sheet account No. 735, "Funded debt unmatured."

NOTE D.—Whenever interest, premium, or discount assignable to the construction period is incurred in connection with an expenditure covered by some specific road and equipment account or accounts, such interest, premium, or discount shall be charged directly to the specific accounts to which it is related.

77. OTHER EXPENDITURES—GENERAL.

This account shall include all expenditures of a special and incidental nature in connection with the acquisition and construction of original road and equipment, road extensions, additions, and betterments which can not properly be included in any other account in this classification.

NOTE CAREFULLY GENERAL INSTRUCTIONS, PAGES 9 TO 14.

185 INTERSTATE COMMERCE COMMISSION,
WASHINGTON

In the matter of a uniform system of accounts to be kept by steam roads

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 25th day of July, 1925.

The matter of uniformity in accounting for the cost of repairs of equipment being under consideration:

It is ordered that the fifth paragraph of the text of General Account II, "Equipment," appearing on page 33 of the Classification of Investment in Road and Equipment of Steam Roads, issue of 1914, be, and it is, hereby canceled.

It is further ordered that this order shall become effective on August 1, 1925, and that thereafter all repairs of equipment shall be charged to operating expenses. In the application of this rule, due consideration must be given to the general instructions in the Classification of Investment in Road and Equipment with respect to the accounting for additions to, and betterments of equipment.

By the commission, Division 4.

[SEAL.] GEORGE B. MCGINTY, *Secretary.*

186 Interstate Commerce Commission, Washington

Order

In the matter of uniform system of accounts to be kept by steam roads.

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 18th day of April, A. D. 1928.

The matter of establishing the requirement that expenditures by steam roads for additions and betterments up to a certain maximum shall be charged to operating expenses being under consideration:

It is ordered that the following instructions are hereby prescribed as the second paragraph of section 2 of the general instructions on page 9 of the Classification of Investment in Road and Equipment of Steam Roads, issue of 1914:

(a) When the property changes involves: (1) The acquisition of property (other than land, a section of track, or a unit of equipment) the cost of which is less than $100; (2) the betterment of property (see paragraph 10 of section 2 of the general instructions in the Classification of Investment in Road and Equipment), the excess cost of which is less than $100; or (3) the retirement of property (other than land, a section of track, or a unit of equipment) the ledger value of which is less than $100, the cost of the property acquired or the value of the salvage from the property retired shall be appro-

priately included in operating expenses, and no adjustment shall be made in the property investment account.

(b) The carrier shall not parcel expenditures or retirements under a general plan for the purpose of bringing the accounting therefor within this rule, neither shall it combine unrelated items of property for the purpose of excluding the accounting therefor from the rule.

(c) This exception to the general instructions of this classification shall not apply to property changes involving the retirement and replacement of property when either the ledger value of the property retired or the cost of the property acquired is $100 or more. The accounting for such changes shall be in accordance with section 7 of these instructions.

187 (d) The carrier is permitted to adopt for the purpose of its accounting a limit of less than the aforesaid amounts provided it first files with the commimssion the maximum amount which it proposes to adopt and makes no subsequent change in this amount except by authority of the commission.

It is further ordered that the last sentence in the ninth paragraph of section 2 and the third paragraph of section 7 of the general instructions of the Classsification of Investment in Road and Equipment of Steam Roads, issue of 1914, be rescinded.

It is further ordered that these orders shall be effective on January 1, 1928.

By the commission, Division 4.

[SEAL.] GEORGE B. MCGINTY, *Secretary.*

188 *Application of Atlantic Coast Line Railroad Company under paragraph 2 of section 5 for authority to acquire control by the purchase of all of the common stock of Atlanta, Birmingham and Coast Railroad Company, a corporation to be organized to acquire and operate the properties now operated by the receiver of Atlanta, Birmingham and Atlantic Railway Company, and, under section 20–a, for authority to assume certain obligations as to the guaranty of dividends on and the redemption of the preferred stock of said Atlanta, Birmingham and Coast Railroad Company*

APRIL 12, 1926.

To the Honorable Interstate Commerce Commission:

Atlantic Coast Line Railroad Company, hereinafter called the applicant, hereby makes application for the approval and authorization of this commission of the acquisition by it of control of Atlanta, Birmingham and Coast Railroad Company, yet to be organized, by the purchase of all of the common, voting, capital stock of said Atlanta, Birmingham and Coast Railroad Company, hereinafter called the carrier, and for authority to enter into certain guaranties as to the payment of dividends on, and the redemption of the pre-

ferred stock of said carrier, as hereinafter more fully set out, and in support of its application respectfully shows the following facts:

1. The exact corporate name of applicant is Atlantic Coast Line Railroad Company.

2. Applicant is a carrier by railroad, engaged in the transportation of persons and property subject to the interstate commerce act.

3. The names, titles, and post office addresses of certain of applicant's officers are: J. R. Kenly, president, Wilmington, N. C.; H. L. Borden, secretary, 71 Broadway, New York; Geo. B. Elliott, vice president and general counsel, by whom this application is signed, verified, and filed and to whom correspondence with reference hereto should be addressed, Wilmington, N. C.

4. Applicant was organized and received its present charter under the laws of the State of Virginia. It is authorized to, and does operate also in the States of North Carolina, South Carolina, Georgia, Florida, and Alabama.

Carrier is to be organized under the laws of the State of Georgia, or other State approved by the applicant and the committee representing bonds of the Old Company, hereinafter mentioned, and is to acquire and operate the railroad and property heretofore known as Atlanta, Birmingham and Atlantic Railway and now operated by and/or in the possession of the receiver appointed by the United States District Court for the Northern District of Georgia, as hereinafter set out. The said railroad, with its principal termini, points of interchange, etc., is substantially as set out in Appendix 2 attached to the report of this commission in Valuation Docket No. 1, reported in 75 I. C. C., beginning at page 645.

5. The history of the lines of railroad to be acquired by carrier is substantially as set forth in said report and Appendix 2 in Valuation Docket No. 1, hereinabove referred to, down to the time of the organization of Atlanta, Birmingham and Atlantic Railway Company, hereinafter called the Old Company, in the year 1915, as referred to in Exhibit A, 75 I. C. C., 742.

On February 25, 1921, a receiver, appointed by the United States District Court for the Northern District of Georgia, Northern Division, was put in charge of all of the railroad and other property of said Old Company. Said receiver was appointed at the instance of general creditors, but since such appointment foreclosure proceedings have been instituted under the first mortgage of Atlantic & Birmingham Railway Company and under the first and refunding mortgage and the income mortgage of the Old Company and these proceedings are still pending.

Under date of February 23, 1926, an agreement was entered into between applicant and committees representing the holders of income bonds of the Old Company and the first mortgage bonds of Atlantic & Birmingham Railway Company, which agreement contemplates the acquisition by carrier, when organized, of all the property now in the possession of the receiver, above referred to

Carrier is to have an authorized capitalization of $5,200,000 par value of preferred stock and 150,000 shares without par value of common stock. The preferred stock is to be preferred as to cumulative dividends at the rate of 5% per annum (accruing from one year after title to the properties to be acquired by the carrier shall vest in the carrier), and as to assets at $100 and accrued dividends; to be redeemable as a whole but not in part at 103 and accrued dividends; and to have no power to vote except in case of continuing default in the payment of two semiannual dividends, in which case the preferred stock is to have exclusive voting power so long as any default shall continue. Dividends at the rate aforesaid and the redemption of the preferred stock upon the liquidation, merger or consolidation of the carrier or any transfer of all or a substantial part of the property of the carrier, are to be guaranteed by the applicant. The said preferred stock and common stock are more particularly described in the plan.

If this agreement and the plan therein contemplated is approved and authorized by this commission, said preferred stock, upon consummation of the plan, will be issued at the rate of $60.00 of stock for $100.00 of bonds to the holders of income bonds and first-mortgage bonds who shall assent to the plan therein provided, and applicant will guarantee the preferred stock issued as therein provided for in the manner and to the extent therein set out, and will execute an instrument of guaranty as therein provided, and will in consideration of the payments hereinafter set forth become the owner of the entire issue of common stock of the carrier and of so much of the preferred stock as would, under the terms of the said agreement, have been issued to the holders of any first-mortgage bonds and/or income bonds who shall not assent to the plan, as aforesaid, had such holders assented.

Applicant avers that the continued operation of the railroad of the Old Company is in the public interest; that the plan herein contemplated will accomplish such continued operation with such ample assurance of financial stability as has not heretofore been possible, and that no other plan has been possible of accomplishment which would assure such continued operation and provide an equally satisfactory recompense to the holders of the bonds, constituting a lien on the properties of the Old Company.

The plan contemplates that all claims having priority over the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company formerly held by the United States Government (if it is necessary to pay off the same), obligations of said receiver, and receivership and reorganization expenses are to be paid in cash, to be provided by the applicant upon the acquisition of the properties by the carrier, except that obligations not matured at the time of the acquisition may be assumed by the carrier instead of being paid in cash. This provision provides for the payment or

retirement of all first and refunding mortgage bonds of the Old Company, and the mortgage securing said bonds is to be released and discharged.

Details of the plan and of the agreement of February 23, 1926, will be presented at the hearing of this application.

As to the value of the stock to be acquired by applicant, reference is made to Valuation Docket No. 1, hereinabove referred to.

6. The lines of carrier do not parallel or compete with those of applicant, but rather form connections therewith which will afford applicant access over its owned and controlled rails from Jacksonville and Thomasville to Atlanta and Birmingham, at which points connection will be made with the lines of Nashville, Chattanooga and St. Louis Railway and of Louisville and Nashville Railroad.

In its report in Docket 12964—Consolidation of Railroads—this commission assigns to system No. 11, A. C. L.-L. & N., the railroad of the Old Company, with no suggested assignment of any portion of said lines to any other system and applicant avers that such assignment is proper and in accordance with the requirements of section 5 of the interstate commerce act.

7. The officers and directors of carrier have not, of course, yet been elected or appointed. If it should develop that application for authority under paragraph 12 of section 20–a is necessary, such application will be filed hereafter and as soon as the facts permit.

8. The making and filing of this application was authorized and directed by the executive committee of the board of directors of applicant at a meeting duly called and held on the tenth day of April, 1926.

9. Applicant is advised that an application under paragraph 18 of section 1, and under section 20–a of the interstate commerce act has been filed by or on behalf of carrier, and since the subject matter of this application is so interrelated with that of carrier's said application it is respectfully prayed that the two applications be heard and considered together.

Exhibits as required by the orders of this commission, dated September 1, 1922, and July 22, 1924, are filed herewith.

Wherefore, applicant respectfully prays that the acquisition by it of control of the carrier and the assumption by it of obligations with respect to the preferred stock of carrier as herein set out be approved and authorized.

ATLANTIC COAST LINE RAILROAD COMPANY.
By GEO. B. ELLIOTT,
Vice President and General Counsel.

STATE OF NORTH CAROLINA,
County of New Hanover.

Geo. B. Elliott, whose name is signed to the foregoing and hereto attached application of Atlantic Coast Line Railroad Company, hereby makes oath that he has knowledge of the things therein stated and that the same are true to the best of his knowledge,

information, and belief, and that he is duly authorized by Atlantic Coast Line Railroad Company to verify and file this application on its behalf.

GEO. B. ELLIOTT.

Subscribed and sworn to before me, a notary public in and for the State and county aforesaid, this day of April, 1926.

B. B. REYNOLDS, *Notary Public.*

My commission expires Dec. 30, 1927.

Exhibits

1. Charter of applicant has been heretofore filed by applicant in Finance Docket No. 1158. By-laws of applicant now in force and with amendments of January 21, 1926, have been filed in Finance Docket No. 5316.

2. Resolutions of the executive committee of applicant approving the acquisition of control and authorizing the filing of this application, and designating by name the officer, are attached hereto.

3. Map showing line of applicant and those of carrier filed herewith.

4. As stated in application, control will be acquired by acquisition of capital stock.

5. Opinion of counsel filed herewith.

6. Balance sheet of applicant filed herewith.

Resolved, that the acquisition by this company of control of the stock of the Atlanta, Birmingham and Coast Railroad Company, a corporation to be organized to acquire and operate the railroad lines and other property now operated by, and/or in the possession of the receiver of Atlanta, Birmingham and Atlantic Railway Company, and the assumption of obligations and making of the guaranties to be entered into by this company with reference to the preferred stock to be issued by said Railroad Company, all set out in an agreement dated February 23, 1926, between this company and committees representing certain bondholders of Atlanta, Birmingham and Atlantic Railway Company, and of Atlantic and Birmingham Railway Company, be and the same is hereby approved, authorized, and directed.

Resolved, further, that George B. Elliott, vice president and general counsel of this company, be and he is hereby authorized and directed, for and on behalf of this company, to make, sign, verify, and file with the Interstate Commerce Commission any and all necessary applications for authority and approval of said commission, as provided in the interstate commerce act, of such acquisition of control by this company of the capital stock of said company, so to be organized, and for the assumption by this company of obligation as to the preferred stock of said company, all as is set out in said agreement of February 23, 1926, and to do any and all other things requisite or advisable in order that said agreement of February 23, 1926, shall be made effective.

I, R. D. Cronly, assistant secretary of Atlantic Coast Line Railroad Company, do hereby certify that the above and foregoing resolutions

were adopted at a meeting of the executive committee of Atlantic Coast Line Railroad Company, duly called and held at the office of the company, in the city of Wilmington, North Carolina, on the 10th day of April, 1926.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Atlantic Coast Line Railroad Company this 13th day of April, 1926.

——— ———,
Assistant Secretary.

APRIL 10, 1926.

To the Honorable Interstate Commerce Commission, Washington, D. C.

Paragraph (b) of section 1, of an act of the General Assembly of the State of Virginia, approved January 12, 1900, constituting in part the charter of Atlantic Coast Line Railroad Company, is as follows:

"It may from time to time purchase, own and hold bonds or other evidences of debt, the shares of the capital stock of any railroad company or companies formed under the laws of this or any other State and from time to time may guarantee or assume the bonds, evidences of indebtedness or capital stock of any such railroad company."

I, therefore, am of opinion that said Atlantic Coast Line Railroad Company is duly authorized under its charter and under the laws of the State of Virginia to acquire control of the Atlanta, Birmingham and Coast Railroad Company proposed to be organized to acquire and operate all of the railroad lines and other properties owned by Atlanta, Birmingham and Atlantic Railway Compny and is duly authorized to enter into the guarantees with respect to the preferred stock to be issued by said company as set out in the application of Atlantic Coast Line Railroad Company to this commission and hereto attached.

GEO. B. ELLIOTT,
General Counsel Atlantic Coast Line Railroad Company.

Atlantic Coast Line Railroad Company,
Office of Comptroller

GENERAL BALANCE SHEET, FEBRUARY 28TH, 1926

ASSETS

Investments:		
701. Investment in road and equipment, per schedule		$243,204,003.24
702. Improvements on leased railway property		124,020.19
703. Sinking funds		21,919.35
704. Deposits in lieu of mortgaged property sold		2,592.53
705. Miscellaneous physical property—		
Rails rented	$1,388,531.17	
Florida West Coast Improv. Co.	22,118.91	
The A. L. & I. Co., trustee, land at Thomasville, Ga.	1,000.00	
		1,411,650.08
706. Investments in affiliated companies, per schedule		69,227,859.37
707. Other investments, per schedule		7,463,316.28
Total		321,455,361.04

Current assets:		
708. Cash, per schedule		$18,396,558.29
711. Special deposits, per schedule	$1,773,152.12	
Carrier's own issue at date	575,000.00	
		1,198,152.12
712. Loans and bills receivable, per schedule		4,966.27
713. Traffic and car-service balances receivable		2,923,633.21
714. Net balances receivable from agents and conductors		1,257,930.35
715. Miscellaneous accounts receivable, per schedule		2,808,743.80
716. Material and supplies		7,497,060.29
717. Interest and dividends receivable		272,159.82
719. Other current assets: Advances on freight in transit		67,209.71
Total		34,426,413.86
Deferred assets:		
720. Working fund advances		19,738.80
721. Insurance and other funds, per schedule		563,742.98
Total		583,481.78
Unadjusted debits:		
723. Rents and insurance paid in advance: Insurance		133,975.17
727. Other unadjusted debits, per schedule		1,751,275.76
		1,885,250.93
728. Securities issued or assumed, unpledged—		
A. C. L. R. R. Gen. Uni. Mtge. 4½% bonds	$17,162,683.87	
A. C. L. R. R. Con. Mtge. 4% bonds	388,000.00	
A. C. L. R. R. Gen. Uni. Mtge. 6% bonds	33,762,332.84	
	51,313,016.71	
729. Securities issued or assumed, pledged:		
A. C. L. R. R. Co. Gen. Uni. Mtge. 4½ bonds	10,000,000.00	
Grand total		358,350,307.61

LIABILITIES

Stock:		
751. Capital stock actually outstanding at date—		
(a) Common stock	$67,586,200.00	
Class "A," R. & P. R. R.	1,000,000.00	
(b) Preferred stock	196,700.00	
Total	68,782,900.00	
753. Premium on capital stock	4,829,442.50	
		$73,612,342.50
Long-term debt:		
755. Funded debt unmatured—		
(a) Equipment obligations—		
No. 4, allocated	3,557,700.00	
No. 4A, unallocated	270,000.00	
6½% certificates "D," book liability	3,000,000.00	
Total	6,827,700.00	

"D"—Denotes red figures.

Long-term debt—Continued.		
Funded debt unmatured—Continued.		
(b) Mortgage bonds, book liability—		
Per schedule	$163,737,016.71	
Held by or for carrier	61,888,016.71	
Total	101,849,000.00	
(c) L. & N. R. R. Co. coll. trust bonds—		
Book liability	35,000,000.00	
A. C. L. R. R. Co. 10-year notes, book liab	6,000,000.00	
Total	41,000,000.00	
(d) B. & W. income, book liability	8,000.00	
(e) Conv. debent., book liability	4,444,830.00	
New certificates, book liability	135,100.00	
Total	4,579,930.00	
Total		$154,264,630.00
Current liabilities:		
759. Traffic and car-service balances payable	1,978,008.93	
760. Audited accounts and wages payable—		
Vouchers	4,209,576.83	
Pay rolls	3,056,446.11	
Unclaimed wages	21,887.12	
Total	7,287,910.06	
761. Miscellaneous accounts payable, per schedule	687,353.78	
762. Interest matured unpaid, per schedule	1,060,478.34	
763. Dividends matured unpaid, per schedule	5,850.75	
764. Funded debt matured, unpaid	10,000.00	
766. Unmatured interest accrued, per schedule	1,328,434.18	
767. Unmatured rents accrued, per schedule	9,306.43	
768. Other current liabilities: Prepaid on freight in transit	250,028.95	
Total		12,617,371.42
Deferred liabilities:		
770. Other deferred liabilities, per schedule		154,601.21
Unadjusted credits:		
771. Tax liability: Taxes accrued	5,154,351.16	
773. Fire insurance fund, general account	556,192.17	
774. Operating reserves, per schedule	D27,676.90	
776. Accrued depreciation, equipment, per schedule	21,111,139.60	
778. Other unadjusted credits, per schedule	1,554,092.62	
Total		28,348,098.65

Corporate surplus:		
779. Additions to property thru income & surplus	$2,423,421.83	
784. Profit and loss balance	86,930,042.00	
		$89,353,463.83
Grand total		358,350,507.61

WILMINGTON, N. C., *April 5th, 1926–t.*

189 *Finance Docket No. 5470. Supplemental application of Atlantic Coast Line Railroad Company made in connection with acquisition of control of Atlanta, Birmingham and Coast Railroad Company*

To the honorable Interstate Commerce Commission:

By its original application heretofore filed and given the docket number above, Atlantic Coast Line Railroad Company, applicant, requested authority under paragraph 2 of section 5 of the interstate commerce act to acquire control of Atlanta, Birmingham and Coast Railroad Company, hereinafter called the New Company, by the purchase of the entire issue of common voting stock of said New Company when organized, for the purposes and in the manner in said application and in the application in Finance Docket No. 5454 set out; and, under section 20a of said act, to assume certain obligations as to the preferred stock to be issued by said New Company. Reference to said original application is hereby made.

Under date of October 26, 1926, the commission entered its order in Finance Docket No. 5454, and including Docket No. 5470, approving generally the plan of reorganization, the acquisition of control the issuance of the common and preferred stock and the making of the guaranties by applicant, but withholding specific authority to the New Company to issue securities and to the applicant for the assumption of obligations until receipt by the commission of proof of the incorporation of the New Company accompanied by copy of its charter.

Since the date of the entry by the commission of its order of October 26, 1926, said New Company has become incorporated under the laws of the State of Georgia and has filed with this commission in said Finance Docket No. 5454 its application dated November 25, 1926. Reference to said application is here made.

As set out in its original application, applicant has agreed to enter into certain guaranties with respect to dividends on said preferred stock of the New Company and with respect to other payments to be made in the event of any liquidation, dissolution or winding up, voluntary or involuntary of the New Company, or in the event of any merger or consolidation of said New Company, or any transfer or conveyance, whether by operation of law or otherwise of all or of a substantial part of the property of said New Company while any of said preferred stock shall be outstanding. The terms of the said guaranty are as set out in an agreement of guaranty between applicant and the Chase National Bank of the city of New York, trustee, a copy of which agreement is filed herewith as a part of this application.

Applicant respectfully states that its charter, the resolutions of its board of directors and the opinion of counsel, filed with and referred to in its original application, justify the acquisition of control and the assumption of obligations as herein and in said original application proposed.

Wherefore, applicant prays that, as requested in this application and in the original application heretofore filed by it, it be given authority under said paragraph 2 of section 5 of the interstate commerce act, to acquire control of the New Company by the acquisition of the entire issue of 150,000 shares of its nopar common stock as described in its application dated November 25, 1926, above referred to, and authority, under section 20a of said act, to assume with respect to the preferred stock to be issued by said New Company the obligations set out in the agreement of guaranty, copy of which is herewith filed as aforesaid.

Respectfully submitted.

ATLANTIC COAST LINE RAILROAD COMPANY.
By GEO. B. ELLIOTT,
Vice President and General Counsel.

WILMINGTON, N. C., *December 6, 1926.*

STATE OF NORTH CAROLINA,
County of New Hanover:

Geo. B. Elliott, whose name is signed to the foregoing and hereto attached supplemental application of Atlantic Coast Line Railroad Company, hereby makes oath that he has knowledge of the things therein stated and that the same are true to the best of his knowledge, information and belief, and that he is duly authorized by Atlantic Coast Line Railroad Company to verify and file this application on its behalf.

GEO. B. ELLIOTT.

Subscribed and sworn to before me, a notary public in and for the State and county aforesaid, this 6th day of December, 1926.

[SEAL.] B. B. REYNOLDS,
Notary Public.

My commission expires December 30, 1927.

189A *Exhibit to supplemental application*

Atlantic Coast Line Railroad Company and the Chase National Bank of the city of New York, as trustee

Guaranty agreement, dated , 1926, for the benefit of the preferred stock of Atlanta, Birmingham and Coast Railroad Company

This guaranty agreement, made and entered into as of the day of , 1926, between the Atlantic Coast Line Railroad Company, a corporation of the State of Virginia (hereinafter called the

Guarantor), party of the first part, and the Chase National Bank of the city of New York (hereinafter called the Trustee), part of the second part, witnesseth:

Whereas the guarantor entered into an agreement dated February 23, 1926, with the committees therein described, pursuant to which agreement the plan and agreement of reorganization dated February 23, 1926, for the reorganization of Atlanta, Birmingham & Atlantic Railway Company was promulgated; and Atlanta, Birmingham and Coast Railroad Company, a corporation of the State of Georgia (hereinafter called the New Company), has been organized for the purpose of carrying out said plan and agreement; and an agreement of sale has been entered into by the New Company and by the purchasers and the reorganization committee therein described; and in and by said agreement dated February 23, 1926, it is provided, among other things, that the guarantor is to receive the common stock of the New Company and is to guarantee the payment of the dividends on and the making of certain payments to the preferred stockholders on or prior to the happening of certain events as therein more fully set forth; and

Whereas the New Company has authorized and proposes to issue not exceeding $5,200,000 par value of its preferred stock (hereinafter called the preferred stock); and

Whereas the guarantor has by resolution of its board of directors duly authorized the execution and delivery of this agreement and the endorsement upon each certificate representing shares of the preferred stock of the New Company of a guaranty in substantially the following form:

[Form of guaranty]

For value received, Atlantic Coast Line Railroad Company hereby guarantees to the registered holders from time to time of the shares of preferred stock of Atlanta, Birmingham and Coast Railroad Company (hereinafter called said company) represented by the within stock certificate, the due and punctual payment to such registered holders upon each July 1 and January 1, beginning on July 1, 1928 (except that in the case of preferred stock issued after January 1, 1928, such payments shall be cumulative and accrue only from the date on which such stock shall have been issued), of an amount equal to 2½% of the par value of such shares, and also guarantees to such registered holders, that, in the event of any liquidation, dissolution, or winding up, voluntary or involuntary, of said company, or in the event of any merger or consolidation of said company or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of said company, while any of said preferred stock is outstanding, such registered holders shall receive, at or prior to the happening of such event, payment of the redemption price of $103 in cash for each of such shares, together with a sum equal to 5% per annum of the par value of such shares from January

1, 1928, to the date fixed for redemption less the aggregate amount of all cash dividends theretofore paid thereon. This guaranty is absolute and unconditional. This guaranty is made under and subject to the provisions of a guaranty agreement dated as of , 1926, made between Atlantic Coast Line Railroad Company and the Chase National Bank of the city of New York, as trustee, to which reference is hereby made for the rights of the holders of the within certificate in respect of this guaranty and to all the terms of which such holders by acceptance hereof assent.

ATLANTIC COAST LINE RAILROAD COMPANY.

and,

Whereas, all other acts, things, and conditions necessary to make the endorsed guaranties the valid and legal obligations of the guarantor and to make this guaranty agreement a valid and legal instrument for the protection of the endorsed guaranties have been done and performed and have happened:

Now, therefore, in consideration of the premises and of the delivery of the common stock of the New Company to the guarantor and of the acceptance and purchase of the preferred stock by the several holders and purchasers thereof from time to time, who are hereby invited to accept and purchase the same in reliance upon the guaranties endorsed upon the stock certificates as hereinbefore provided (said guaranties being herein called the endorsed guaranties) and upon this guaranty agreement, and of one dollar and other valuable considerations received from such holders and the trustee, the receipt whereof is hereby acknowledged, and for the purpose of assuring to the registered holders of preferred stock the payment of semi-annual dividends thereon and the redemption thereof as hereinafter provided, and for the purpose of evidencing and performing the obligations of the guarantor under said agreement dated February 23, 1926, the guarantor covenants, stipulates, and agrees, as follows:

Section 1. The guarantor hereby guarantees to the trustee, for the use and benefit of the registered holders from time to time of the shares of the preferred stock, and to such registered holders, the due and punctual payment to such registered holders, upon each July 1 and January 1 beginning with July 1, 1928 (except that in the case of preferred stock issued after January 1, 1928, such payments shall be cumulative and accrue only from the date on which such stock shall have been issued) of an amount equal to two and one-half per cent (2½%) of the par value of the preferred stock registered in the names of such holders respectively. The guarantor also hereby guarantees to the trustee and to such registered holders that, in the event of any liquidation, dissolution, or winding up, voluntary or involuntary, of the New Company, or in the event of any merger or consolidation of the New Company, or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of the New Company, while any

of said preferred stock shall be outstanding, the New Company shall at or prior to the date of the happening of such event duly redeem the whole of the preferred stock at the time outstanding, and such registered holders shall receive, at or prior to the date of the happening of such event, payment of the redemption price of one hundred and three dollars ($103) in cash for each share of the preferred stock registered in the names of such holders respectively, together with a sum equal to five per centum (5%) per annum of the par value of such preferred stock from January 1, 1928 (except that in the case of preferred stock issued after January 1, 1928, such payment shall be cumulative and accrue only from the date on which such preferred stock was issued), to the date fixed for redemption less the aggregate amount of all cash dividends theretofore paid thereon.

The books for the transfer of the preferred stock may be closed by resolution of the board of directors of the New Company for a period not exceeding thirty days prior to the day appointed for the payment of any dividend. In lieu of closing such transfer books the board of directors may by resolution fix a record date not more than thirty days prior to the day appointed for the payment of any dividend, and only registered holders of preferred stock on such record date shall be entitled to receive payment of such dividend.

Section 2. The guarantor hereby agrees that its guaranty in the form above set forth may be endorsed upon all certificates from time to time issued for any shares of the preferred stock, whether such certificates be issued upon an original issue or upon a transfer or otherwise; and the guarantor hereby authorizes and ratifies the endorsement of guaranties in said form upon all such certificates, and such endorsed guaranties shall be valid and binding for all purposes whatsoever without any signature or other authentication or ratification on behalf of the guarantor.

Section 3. The guarantor agrees that it will not plead or otherwise take or accept the benefit of any statute or rule of law requiring that proceedings be first taken against a principal debtor or giving a guarantor or surety any special rights, privileges, or defenses. The obligations assumed by the guarantor hereby and by the endorsed guaranties shall be in no way conditioned on the existence or continuance of any rights against the New Company in respect of the preferred stock, or on the power or authority of the New Company to issue the preferred stock, or on the validity of the prefererd stock or any of the terms or provisions thereof, or on the existence or continuance of the New Company as a legal entity while any of the preferred stock shall be outstanding; and the obligations assumed by the guarantor hereby and by the endorsed guaranties shall not be discharged, impaired or affected (a) by any failure of the New Company to have net earnings from which to declare and pay semi-annual dividends on the preferred stock or assets to distribute and pay to the registered holders of the pre-

ferred stock upon any liquidation, dissolution or winding up of the New Company or other event, or (b) by any failure of the New Company to declare any dividend or exercise any right to redeem or to take any other action, or (c) by any change in or amendment of the petition for incorporation or by-laws of the New Company, or (d) by any issue by the New Company of any stocks, bonds or other securities or any incurring by the New Company of any indebtedness or obligations, or (e) by any failure of the trustee or the holders of the preferred stock or any of them to make any demand for payment or assert or pursue any rights against the New Company or other company or person or to give any notice excepting the notice and action required by section 4 hereof (all other notice being hereby expressly waived by the guarantor), or (f) by any giving of time or any other variation or alteration of the risk, or (g) by any act, failure or omission whatsoever on the part of the trustee or the holders from time to time of the preferred stock or any of them, it being the purpose and intent hereof that such obligations assumed by the guarantor shall be absolute and unconditional and shall not be discharged, impaired or affected except by payment of the amounts guaranteed and then only to the extent of such payment.

No debt or obligation which may at any time be or become due and owing by the New Company or the trustee to the guarantor shall be used as a set-off, counterclaim or defense to any obligation of the guarantor under this guaranty agreement or the endorsed guaranties upon the preferred stock. This guaranty agreement and such guaranties shall not be subject to any change or modification through agreement between the New Company and the guarantor or between the trustee and the guarantor.

Section 4. Upon any failure of the New Company to pay amounts guaranteed in section 1 hereof to be paid to the registered holders of the preferred stock, the guarantor will forthwith pay such amounts to the trustee, and payment to the trustee of all amounts then due from the guarantor under this guaranty agreement and the endorsed guaranties shall satisfy and discharge all rights of the trustee and/or the registered holders of the preferred stock to collect from the guarantor or from the New Company the amounts so paid. Upon the failure of the guarantor at any time to make any payment required hereby, or to perform or observe any covenant or condition herein contained, the trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute such actions or proceedings at law or in equity as in its opinion may be necessary or proper for the collection of the sums so due and unpaid, or for the enforcement of any other right hereunder or under the endorsed guaranties. No holder of preferred stock shall be a necessary party, plaintiff or otherwise, to any such proceeding, and all rights hereunder may be enforced by the trustee without the possession of any preferred stock or certificates representing the same or endorsed guaranties, and without the production thereof on

any trial or other proceeding relative thereto. The rights of the trustee hereunder may be exercised from time to time and as often as may be deemed expedient by the trustee.

The guarantor hereby irrevocably appoints the New Company as its agent or attorney for the service of process in any suit or other legal proceeding arising out of this agreement, and hereby authorizes and directs its said attorney to accept service of process in the name and behalf of the guarantor in any such suit or other legal proceeding of any nature instituted by the trustee or by any holder of preferred stock hereunder as provided in this Section 4, or in any suit upon the endorsed guaranties or any of them.

No holder of any preferred stock shall have any right to institute any suit or action under the provisions of this agreement or of the endorsed guaranties, unless such holder shall have given to the trustee written notice of default, nor unless the registered holders of not less than ten per cent in par value of the preferred stock then outstanding shall have requested the trustee in writing to take action in respect of the matter complained of and shall have offered it indemnity satisfactory to the trustee against the costs, expenses, and liabilities to be incurred therein or thereby, nor unless the trustee for thirty days after such notice, request and offer of indemnity shall have refused or neglected to act thereon.

Section 5. Any sums collected by the trustee pursuant to the provisions of the foregoing section 4 on account of any amount due and unpaid, shall be distributed by the trustee, as soon as possible, pro rata to the registered holders of the preferred stock as their names appear upon the books of the New Company, or if there be a transfer agent of agents of the preferred stock then upon the books of such transfer agent or agents. It is the intent of this guaranty agreement that all costs and expenses in connection with this guaranty agreement and the endorsed guaranties shall be paid by the guarantor, and that the registered holders of the preferred stock shall receive the amounts hereby guaranteed net, free from all costs, expenses, and other deductions, and that all such costs and expenses shall be borne by the guarantor.

Section 6. The trustee shall not be bound to take any action hereunder for the enforcement hereof or otherwise unless indemnified to its satisfaction against any expense, cost or liability incurred or to be incurred by it, and put in funds for the purpose, nor unless it shall be requested in writing so to act by the registered holders of not less than ten per cent in par value of the preferred stock then outstanding. Any preferred stock then owned by the guarantor or by the New Company, or in which either of them may then have a beneficial interest, whether such stock be of record in their respective names or not, shall be excluded as outstanding for the purposes of this section 6 and section 8 hereof.

Section 7. Any request, direction, or other action taken by the holders of preferred stock under the provisions hereof shall be in

writing, and may be in any number of concurrent instruments of similar tenor, and may be signed in person or by attorney or proxy appointed in writing. Proof of the date and execution of any such writing shall be sufficient and conclusive in favor of the trustee when evidenced by the certificate of any officer of any jurisdiction who by the laws thereof has power to take acknowledgments of deeds to be recorded therein, or by an affidavit of any witness to such execution.

The trustee may for any purpose ascertain the registered holders of preferred stock and their addresses by a list of such holders and addresses furnished by any transfer agent or other proper officer of the New Company, and any action taken pursuant to such list shall be conclusive in favor of the trustee. The trustee may be a transfer agent, but as such shall have no liability hereunder.

Section 8. The trustee may at any time resign and be discharged from the trusts created hereby by a written notice delivered to the guarantor and mailed to each registered holder of preferred stock, specifying a date when such resignation shall take effect. The trustee at any time may be removed by an instrument in writing filed with such trustee and executed by a majority in interest of the registered holders of preferred stock when outstanding.

In case at any time the trustee shall resign or be removed or become incapable of acting, or from any cause a vacancy shall occur in the office of trustee, a successor trustee may be appointed by a majority in interest of the registered holders of the preferred stock then outstanding by an instrument in writing signed by such holders or by their attorneys in fact thereunto duly authorized; but until a new trustee shall be so appointed by the holders of preferred stock the guarantor by an instrument executed by order of its board of directors may appoint a trustee to fill such vacancy. The guarantor shall mail notice of any such appointment to each registered holder of preferred stock; and any trustee so appointed by the guarantor shall immediately and without further act be superseded by a new trustee appointed by the holders of preferred stock.

Any successor trustee appointed hereunder shall execute, acknowledge, and deliver to the guarantor an instrument in writing accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed, or conveyance, shall become fully vested with all the estate, rights, powers, trusts, and duties of its predecessor; but such predecessor and the guarantor, or either of them, shall, upon the written request of the successor trustee, execute and deliver all such instruments as the successor trustee may deem proper in the premises to effectuate the intent thereof.

The trustee hereunder shall always be an incorporated trust company or bank in the United States of America having a capital and surplus of at least one million dollars. No bond shall be required of the trustee unless ordered by a court having jurisdiction and for cause shown. The term "trustee" whenever used in this guaranty agreement shall include any successor or successors of the trustee

appointed in the manner hereinbefore provided, and all references to the trustee herein contained shall extend to and be applicable to the trustee from time to time acting under this guaranty agreement.

Section 9. The trustee hereby accepts the trusts imposed upon it by these presents, but only upon and subject to the following terms and conditions:

(a) The trustee may execute and enforce any of the rights, trusts, and powers imposed or conferred on it by these presents and perform any of the duties required of it, by or through its attorneys, agents, or employees, and shall be entitled to advice of counsel concerning all matters in connection with the trusts hereof and its duties hereunder, and may in all cases pay such reasonable compensation as it shall deem proper to all such attorneys, agents, employees, and counsel as may reasonably be employed in connection with the trusts hereof, and the guarantor covenants and agrees to repay all such liabilities and expenses so incurred. The trustee shall be entitled to reasonable compensation for its services, and the guarantor covenants and agrees to pay the same. The amount payable by the guarantor on account of the trustee's compensation and counsel and other fees shall be subject to the guarantor's approval.

(b) The trustee shall not be responsible for any recital herein contained, nor for the collecting of any moneys from the guarantor hereunder.

(c) The trustee shall be protected in acting upon any notice, request, consent, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons.

(d) The trustee shall be under no liability to do any act hereunder or to bring or defend any suit in respect hereof unless put in funds for the purpose and indemnified to its reasonable satisfaction against loss, cost, liability, and expense.

(e) The trustee shall not be liable for any action taken by it in good faith and believed by it to be within the discretion and powers conferred upon it by these presents or be responsible for the consequences of any oversight or error of judgment on its part; and the trustee shall not be answerable for the default or misconduct of any agent, employee, or attorney selected by it if such person shall have been selected with reasonable care, nor shall it be liable for anything whatever in connection with this trust or its action hereunder, except for its own wilful misconduct or gross negligence. The trustee may consult with counsel, and any action taken by the trustee in good faith on advice of its counsel shall be a complete and conclusive protection to the trustee.

(f) The trustee shall have a first lien upon all funds received by it hereunder for reasonable compensation for its services in the premises as well as for all expenses, advances, and counsel fees incurred by it and by the execution of the trusts hereby created and the exercise and performance of the powers and duties of the trustee hereunder, and for all other sums, if any, whatsoever, payable here-

under by the guarantor to the trustee; and the guarantor hereby covenants and agrees to pay to the trustee upon demand from time to time all such sums.

The foregoing provisions in this article are intended only for the protection of the trustee and shall not be taken to limit or affect any discretion or power given to the trustee hereunder to determine whether or not it shall take action in respect to any default or other matter or to limit or affect any other discretion or power herein given to the trustee.

Section 10. This guaranty agreement is a corporate obligation of the guarantor, and no personal liability whatever shall attach to or be incurred by, and no recourse, either directly or through the guarantor, by the enforcement of any assessment or penalty or by any legal or equitable proceeding by virtue of any statute or otherwise, shall be had against the incorporators, stockholders, officers, or directors of the guarantor under or in connection with or arising from or growing out of this guaranty agreement or any indorsed guaranty; any and all such personal liability is hereby expressly waived as a condition of and consideration for the execution of this guaranty agreement and of the indorsed guaranties.

This guaranty agreement may be executed in several counterparts, each of which shall be deemed an original; and such counterparts shall constitute but one and the same instrument.

In witness whereof, Atlantic Coast Line Railroad Company and the Chase National Bank of the City of New York, as trustee aforesaid, have caused these presents to be executed by their respective officers, directors, or attorneys thereto duly authorized, as of the day and year first above written.

ATLANTIC COAST LINE RAILROAD COMPANY,
By ——— ———, *Chairman.*
[CORPORATE SEAL.]
Attest:
——— ———, *Secretary.*
Witnesses as to Atlantic Coast Line Railroad Company:
——— ———,
——— ———.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
By ——— ———, *Vice President.*
[CORPORATE SEAL.]
Attest:
——— ———, *Assistant Secretary.*
Witnesses as to the Chase National Bank of the City of New York:
——— ———,
——— ———.

(See note.)

STATE OF NEW YORK,
County of New York, ss:

On the ------ day of ------, 1926, before me personally came ------, to me known, and who being by me duly sworn did depose and say: that he resides in ------; that he is the ------ of Atlantic Coast Line Railroad Company, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[NOTARIAL SEAL.] ——— ———, *Notary Public.*

STATE OF NEW YORK,
County of New York, ss:

On the ------ day of ------, 1926, before me personally came ------, to me known, and who being by me duly sworn did depose and say: that he resides in ------; that he is vice president of the Chase National Bank of the City of New York, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[NOTARIAL SEAL.] ——— ———, *Notary Public.*

NOTE

By the terms of the agreement of February 23, 1926, providing for the acquisition of control of the Atlanta, Birmingham and Atlantic Railway by Atlantic Coast Line Railroad Company, it is provided that dividends on the preferred stock of the New Company shall accrue only from one year after the date on which possession of the properties of Atlanta, Birmingham and Atlantic Railway shall be vested in the New Company.

In this guaranty agreement it is stated that dividends shall accrue from one year after January 1, 1928, this date being tentatively agreed upon. In the event the supplementary order of the commission, provided for in the last paragraph of the report in Finance Docket 5454, dated October 26, 1926, is not entered in time to permit the vesting of possession of the property in the New Company, prior to January 1, 1926, it will be necessary to amend this guaranty agreement so as to provide that dividends shall begin to accrue on the preferred stock only from one year after the actual date of such vesting of possession, and that the first dividend payable July 1, 1928, shall be proportionately decreased.

Finance Docket No. 5454*—Reorganization and control of Atlanta, Birmingham & Atlantic Ry. Co.

Upon further hearing, application of commission's accounting orders to statement of the investment accounts of the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927, considered and construction recommended. Previous reports, 117 I. C. C. 181 and 439.

George B. Elliott and C. H. Davis for Atlanta, Birmingham & Coast Railroad Company.

Report upon further hearing proposed by Assistant Director C. V. Burnside

In the original report, certificate, and order in these proceedings, dated October, 26, 1926, 117 I. C. C. 181, the commission, by division 4, authorized a committee representing the bondholders of the Atlanta, Birmingham & Atlantic Railway Company and a new corporation to be known as the Atlanta, Birmingham & Coast Railroad Company to acquire and operate the line of railroad of the Atlanta, Birmingham & Atlantic Railway Company, but deferred action upon the application of the new corporation to issue capital stock and of the Atlantic Coast Line Railroad Company to acquire control of the New Company. In a supplemental report and order, issued December 21, 1926, 117 I. C. C. 439, the new corporation was authorized to issue $5,180,344.07 of preferred capital stock and 150,000 shares of common stock without nominal or par value, and the Atlantic Coast Line was at the same time authorized to acquire control of the New Company by purchase of its capital stock.

Under the reorganization plan thus authorized to be carried into effect, outstanding bonds and scrip of the Old Company amounting to $8,633,906.78 were exchanged for preferred stock of the New Company at the ratio of $100 of bonds for $60 of stock, thus requiring the issue of the $5,180,344.07 of preferred stock of the New Company above mentioned. This stock was to be preferred as to cumulative dividends at the rate of 5 per cent per annum. The additional 150,000 shares of no par common stock issued by the New Company was acquired by the Atlantic Coast Line in consideration of the payment by that company of current outstanding obligations of the receiver and of various expenses in connection with the reorganization, amounting, as a whole, to about $4,080,000. The Atlantic Coast Line also guaranteed dividends on the preferred stock. The New Company, although under complete control of the Atlantic Coast Line, was to be operated as a separate entity and was to

* This report also embraces Finance Docket No. 5470, application of Atlantic Coast Line Railroad Company for authority to acquire control of Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock and to assume certain obligations.

maintain separate accounts. It was recognized that the unusual circumstances might give rise to questions concerning the proper statement of the capital accounts of the New Company, and the order of December 21, 1926, authorizing issurance of preferred and common stock by the New Company, contained the following proviso: "Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value, and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

In response to this requirement, the New Company proposed to include in its investment account $29,471,859.00, based upon the valuation of the railroad as of 1914, made by the commission under section 19a of the interstate commerce act, as reported in 75 I. C. C. 645, with additions and adjustments in recognition of changes in property between the date of valuation and January 1, 1927. Our Bureau of Accounts objected to this proposal and proposed instead the amount of $9,261,043.87, made up of $5,180,344.07, par value of the preferred stock issued by the New Company, plus $4,080,699.80, the expenditure assumed by the Atlantic Coast Line in consideration of the delivery of the 150,000 shares of no-par stock of the New Company. The carrier thereupon made a supplemental application to the commission asking for such construction of the order of December 21, 1926, as would support its proposed accounting and for oral argument. The petition was denied on April 9, 1928. The carrier then sought an injunction against the enforcement of the order as construed by the commission, and the District Court for the Northern District of Georgia, Atlanta Division, on October 26, 1928, set the order aside, leaving the supplemental application of the carrier to stand for hearing before the commission in due course. Atlanta, B. & C. R. Co. v. United States, 28 F. (2d) 885. In concluding its discussion the court said:

"While the commission might, on the record already before it, properly refuse to allow its valuation of the railroads as of 1914 to be the measure of their fair value when acquired by the Coast Company, nevertheless to fix the value suggested by Director Wylie without a hearing would be arbitrary and unlawful."

Pursuant to the court's decision, the commission reopened the proceedings for further hearing, which was held on February 4, 1929. At this hearing the carrier placed in evidence the commission's report of valuation of the railroad properties involved in the proceedings, showing a value of carrier property on December 31, 1926, of $24,481,893.86 and a value of property held by the carrier for purposes other than those of a common carrier on the same date of $1,262,970, making a total of $25,744,863.86. It also placed in evi-

dence a proposed balance sheet of the carrier as of January 1, 1927, showing the above amounts as "investment in road and equipment" and "miscellaneous physical property," respectively. In the same proposed balance sheet the liability on account of capital stock is shown as $27,001,407.26. The carrier has also filed a brief in which it reasserts its right under the provisions of the commission's regulations in its "Classification of investment in road and equipment of steam roads" to include the amount of $25,744,863.86 in its accounts as investment.

The principal text of road and equipment account No. 41, "Cost of road purchased," mentioned in the commission's order of December 21, 1926, is as follows:

"This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only the road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made."

The text contains auxiliary provisions which are not pertinent to this discussion.

The carrier contends that the portion of the text above quoted reading "where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis" is authority for the inclusion in the account of the value found by the commission under section 19a of the act, as evidenced by its reports. It should be noted, however, that the provisions stated under the headings of various accounts of the classification are all governed by the general principles of the classification as stated in the general instructions, from which we quote as follows:

"The accounts prescribed in this classification are designed to show the investment of the carrier in property devoted to transportation service."

And again—

"The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification is other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it."

No question is raised by the carrier as to the propriety of accepting the par value of the preferred stock $5,180,344.07 as its true

value for the purpose of the accounting, but it contends that the minimum amount that can be set up in its investment accounts is $25,744,863.86, arrived at as already described. That the court in its decision above cited did not accept the theory of the carrier is plainly evidenced by its language, from which we quote as follows:

"The commission's classification rule, formulated for stating original investment in road and equipment, whether constructed by the accounting carrier or purchased by it, evidently aimed to avoid 'watered' or even estimated values and to reflect only actual outlays. Cost and not value is everywhere spoken of. But rule 41, dealing with a purchased road, of necessity requires that, when a road is paid for otherwise than by cash, the 'current cash value of the consideration' is to be entered in the accounts. The consideration here was stock, preferred and common. The valuation of the preferred stock at $5,180,000 is not disputed. Two methods of valuing the common stock are contended for—one, that it was worth the value of the roads acquired, less the value represented by the preferred stock; the other, that it was worth what the Coast Line Company paid for it in cash, $4,080,000. The requirement of the order of December 21, 1926, that the common stock must be reckoned 'on a basis not in excess of the amount received therefor,' comes to the same thing as the requirement of rule 41 and meets the same divergent constructions. It can not be said with accuracy that the money paid by the Coast Line Company was received by the Coast Company for its stock. The Coast Company received for the stock the deed of the bondholders' representatives covering the railroads, and they in turn sold the common stock to the Coast Line Company, and for a consideration not only of $4,080,000 actually paid but also of heavy guaranties of dividends on the preferred stock over and above its par already allowed in this valuation.

"The words of the order of December 21, 1926, were acted on by the parties and should have their fair operation. We think they require that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it. We do not think this valuation is fixed, either by the value as of 1914, made by the commission, or by what the Coast Line Company was willing to pay and assume, though both may be matters important to be considered in making a fair valuation, for, on the one hand, the Coast Line Company may not have paid the full fair value in its trade with the bondholders' representatives, while, on the other hand, hearings, both before this court and before the commission, had pending the sale, strongly indicated that these railroads, circumstanced as they were, were not then worth for sale or operation nearly what had been originally invested in them."

In substance the transactions here under consideration were as follows:

The Atlantic Coast Line itself, or through the new corporation which it caused to be formed, acquired the railroad properties of the Atlanta, Birmingham & Atlantic by the payment of $4,080,699.80 in cash for the liquidation of various claims and by the issuance to the bondholders of $5,180,344.07 of preferred stock of the new company, on which it guaranteed dividends at 5 per cent per annum. There appears to be no other payment made or obligation incurred. The nature of the transaction is not changed by the fact that the Atlantic Coast Line for its own purposes took title to the property in the name of its subsidiary.

The proviso in the order of December 21, 1926, previously quoted, was an application of the accounting orders to these transactions. The consideration given by the new company, considered as a separate entity, was in the form of stock, preferred and common. In setting up the value of the preferred stock the commission required that it be reckoned on a basis not in excess of its par value, which was $5,180,344.07, and the order further provided that the cash value of 150,000 shares of nopar common stock issued to the Atlantic Coast Line must be reckoned on a basis not in excess of the "amount received therefor." At the time this order was issued, the amount of the expenses assumed by the Atlantic Coast Line had not been determined, but was estimated to be about $3,677,500. It has since been determined that the true amount is $4,080,699.80. It was urged upon the court, which apparently gave weight to the contention, that the issue of common stock should be assumed to cover not only this amount, but an additional sum in recognition of the obligation of the Atlantic Coast Line to pay dividends upon the preferred stock in case the earnings of the New Company should not be sufficient.

As stated in the original and supplemental reports, dividends on the preferred stock were guaranteed by the Atlantic Coast Line at the rate of 5 per cent per annum, payable in semiannual installments, such dividends to be cumulative and to accrue from January 1, 1928. The stock is redeemable at the option of the issuing company in whole, but not in part, on any semiannual dividend date after January 1, 1935, at 103 and accrued dividends. Upon the winding up or dissolution of the corporation, the holders of the preferred stock are to receive par value of the stock and accrued dividends before recognition of common stock. The common stock is to have exclusive voting power except in case of default in dividend payments on the preferred stock for two successive dividend dates; in such case the preferred stock is to have exclusive voting power so long as the default shall continue. The correctness of this statement is not questioned. It thus appears that by its guaranty of dividends on the preferred stock the Atlantic Coast Line secured itself against default and insured its retention of control of the new

company through the voting rights of the nopar stock which it received. Considered by itself, and assuming that it must be regularly and permanently relied upon, a guaranty of dividends at 5 per cent might be computed at the par value of the stock upon which the dividend is paid. In this case, however, the preferred stock is subject to redemption after a short period of years, and by the exercise of this privilege the liability under the guaranty can be terminated by the purchase of the stock at a premium of 3 per cent. Meanwhile the preferred stockholders have no voice in the corporation, and upon liquidation, which is also within control of the Atlantic Coast Line, they have preference in the distribution of assets to the extent of par value of their stock. The benefits of the guaranty and of interest in the assets of the New Company through ownership of its preferred stock can not be realized concurrently. Under these circumstances, it seems improper to assign a value to the guaranty in addition to the par value of the stock guaranteed.

Even though we accept the theory that the entries in the accounts of investment should be fixed on a basis of the "fair cash value" of the properties acquired rather than that of the amount paid for them, there is no evidence of lack of parity between the cash value of the consideration given and that of the property received, considered as that of a going concern. The history of these properties and the circumstances leading to these proceedings are given in considerable detail in the report of October 26, 1926, 117 I. C. C., at pages 182 to 185, inclusive. As there stated, the properties had been operated at great losses for many years, due principally to inherent traffic weakness, although aggravated by a strike of employees. Under these circumstances great difficulty was met in finding a purchaser at any price with the obligation to operate. As further said in that report, experience only would determine whether or not the investment of the Atlantic Coast Line would be profitable even at the price paid. The contention was then made, but in that instance by the stockholders of the Old Company, that the value found by the commission under section 19a was evidence of inequity in the price to be paid, but it was pointed out that there was no necessary relationship between the cash or exchange value and value for rate-making purposes and that the courts had recognized the distinction. From the standpoint of the former owners the railroad properties had proven to be a liability rather than an asset, and it is apparent that their prospective value to the Atlantic Coast Line lay in their utility as adjuncts of its operating system rather than in the ability of the New Company to earn a profit as a separate entity. If the prospect were otherwise, it would be impracticable to recognize that fact in a definite assignment of value.

In considering the propriety of the commission's accounting rule which it has applied in this case it is to be borne in mind that the "comparative general balance sheet" prescribed by the commission, considered in connection with the instructions for its use, does not

purport to contain a correct statement of capital assets. The current cash value of assets is a variable, depending upon a multitude of circumstances which change from day to day. It is possible, however, to state with approximate correctness the cash or equivalent investment at the time it is made, and the reflection of this amount in the balance sheet of a purchasing company is usually a much nearer approach to a correct statement of asset value than would be either the original or the reproduction cost of the property. That is notably true in this case. The commission's report of valuation of the railroad properties operated by the Atlanta, Birmingham & Atlantic, as reported in 75 I. C. C. 645, endeavored to make it plain that its valuation had no relation to the worth of the properties, but was merely a sum upon which the carrier was entitled to earn a fair return. That it could, as a separate entity, earn such a return, is more than doubtful; but the use of that valuation as a part of the value of railroad property in the country or in that section as a general basis for rates is merely recognition of the necessity of maintaining in operation properties upon which a large population depends for transportation service.

The commission should find that the carrier may include in its balance sheet statement of investment in road and equipment as of January 1, 1927, an amount not exceeding $9,261,043.87.

191 BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 5454—Reorganization and control of Atlanta, Birmingham & Atlantic Railway Company

Exceptions of Atlanta, Birmingham & Coast Railroad Company to report upon further hearing proposed by Assistant Director C. V. Burnside

Filed May 27th, 1929

To the honorable Interstate Commerce Commission, Washington, D. C.:

Atlanta, Birmingham and Coast Railroad Company, herein called petitioner, is in receipt of the proposed report of Assistant Director Burnside and respectfully represents that said report should not be adopted and, as reasons therefor, shows the following:

Foreword

By its order of December 23, 1926, the commission authorized issuance by petitioner of its common and preferred stock, but on condition that

"for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of Account 41, 'Cost of Road Purchased' * * * the cash value of the common stock

issued must be reckoned on a basis not in excess of the amount received therefor."

The Bureau of Accounts ordered that petitioner set up this no-par common stock at $4,080,699.80, which together with the $5,180,344.07 par value of the preferred stock produce the figure $9,261,043.87, referred to by the assistant director in his proposed report.

Upon the insistence by this commission, by its order of April 9, 1928, that this petitioner set up its accounts to accord with this figure, the question was submitted to the statutory three-judge District Court of the United States at Atlanta, Georgia.

That court considered the facts of this case, and the meaning of the condition above quoted in the light of these facts and held that—

"*It cannot be said with accuracy that the money paid by the Coast Line Company was received by the Coast Company for its stock.* The Coast Company received for the stock the deed of the bondholders' representatives covering the railroads, and they in turn sold the common stock to the Coast Line Company, and for a consideration not only of $4,080,000 actually paid, but also of heavy guaranties of dividends on the preferred stock over and above its par already allowed in this valuation. The words of the order of December 21st, 1926, were acted on by the parties and should have their fair operation. *We think they required that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it.*" (Italics ours.)

Having so found the facts, the court

"ordered and decreed that * * * the order of April 9th, 1928, complained of, in so far as the same fixes the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside and *all persons interested in the enforcement of said order*, and their officers and agents, *are permanently enjoined from enforcing the same*, and that the supplemental application of the complainant in which said order was entered by the Interstate Commerce Commission stand for further hearing before said commission." (Italics ours.)

By this order the United States District Court, in a suit to which this commission was a defendant, held that, under the facts of this case, a requirement that petitioner set up its investment in road and equipment at $9,261,043.87 is unlawful.

And yet, in the face of this order of the court, the assistant director in the proposed report harks back to the conception of the facts which this court has held to be erroneous and untrue and recommends that this commission "should find that the carrier may include in its balance sheet statement of investment in road and equipment as of January 1, 1927, an amount not exceeding $9,261,043.87."

This failure of the assistant director to give to the findings of fact and injunction order made by the court the conclusive effect that

must under the law be accorded them by the parties to the suit is apparent throughout the report, and underlies the whole of it. For this reason it is impracticable to do more than point out the more conspicuous instances. This petitioner seeks to do in the following exceptions:

Exception No. 1

Report, page 2:

The report is in error in the statement—

"The additional 150,000 shares of no-par common stock issued by the new company was acquired by the Atlantic Coast Line in consideration of the payment by that company of current outstanding obligations of the receiver * * *"

in that it intimates that said stock was purchased by the Coast Line from the Atlanta, Birmingham & Coast. The findings of the court in the injunction suit referred to show that this stock was purchased by the Coast Line from the bondholders and not from your petitioner. The court says: "It can not be said with accuracy that the money paid by the Coast Line Company was received by the Coast Company for its stock."

Exception No. 2

Report, page 4 (bottom):

The report is in error in that it misapplies those portions of the general instructions quoted from the commission's classification of accounts, in that said quotations require that the accounts shall show "the investment of the carrier" in property devoted to transportation service, whereas said report recommends that the account should show the amount paid by an outside purchaser (Atlantic Coast Line Railroad) for the no-par common capital stock of the carrier to an outside seller (the bondholders), rather than "the investment of the carrier" as found by the court in the injunction suit above referred to.

The report is also in error and misapplies the said general instructions, which require the setting up on "the money value of the consideration at the time of the transaction" where the consideration for the property was other than cash, in that it recommends substituting for said consideration the amount paid for the purchase of the stock of the carrier rather than money value of the consideration, as prescribed in said quotation and as directed by the court.

The court, in its opinion, says:

"The representatives of the bondholders deeded the railroads to the Coast Company in consideration of its entire stock issues and disposed of the preferred stock to the bondholders and of the common stock to the Coast Line Company as proposed."

And again—

"The requirement of the order of December 21st, 1926, that the common stock must be reckoned 'on a basis not in excess of the

amount received therefor' comes to the same thing as the requirement of rule 41, and meets the same divergent contentions. * * * The words of the order of December 21st, 1926, were acted on by the parties and should have their fair operation. We think they required that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it."

Here the court construes the classification and "rule 41" thereof. This ruling of the court is conclusive in this case.

Exception No. 3

Report, page 6 (top):

The report is in error and in conflict with the facts when it states:

"The Atlantic Coast Line itself, or through the new corporation which it caused to be formed, acquired the railroad properties of the Atlanta, Birmingham & Atlantic by the payment of $4,080,699.80 * * *" in that the Atlantic Coast Line has not acquired the railroad properties of the Atlanta, Birmingham & Atlantic, but has only purchased the common stock issued by the Atlanta, Birmingham & Coast, as indicated by the record and in the findings of the court in the suit above mentioned.

The report is in error when it asserts:

"The nature of the transaction is not changed by the fact that the Atlantic Coast Line for its own purposes took title to the property in the name of its subsidiary."

The findings of the court in the injunction suit above mentioned show that the Atlantic Coast Line has merely acquired the common stock of the Atlanta, Birmingham & Coast and has no title to the railroad properties of said company.

Exception No 4.

Report, page 6:

The report states:

"the order further provided that the cash value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line must be reckoned on a basis not in excess of the 'amount received therefor.' At the same time this order was issued the amount of the expenses assumed by the Atlantic Coast Line had not been determined, but was estimated to be about $3,677,500.00. It has since been determined that the true amount is $4,080,699.80."

Here it is apparent that the assistant director treats "the amount received therefor" and "the expenses assumed by the Atlantic Coast Line" as one and the same thing. The court specifically finds that these are not one and the same thing. As above quoted, the court says:

"It can not be said with accuracy that the money paid by the Coast Line Company was received by the Coast Company for its stock."

Exception No. 5

Report, page 8:

The report states:

"Even though we accept the theory that the entries in the accounts of investment should be fixed on a basis of the 'fair cash value' of the properties acquired rather than that of the amount paid for them, there is no evidence of lack of parity between the cash value of the consideration given and that of the property received, considered as that of a going concern."

The position of the examiner, above quoted, is erroneous. The court in this case specifically held that the law required this commission to fix these entries "on the basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it." It is, therefore, not a theory but a rule of law, binding on this commission, which is to be dealt with.

Exception No. 6

Report, page 9:

The report is in error in its statement as a principle that:

"The commission's report of valuation of the railroad properties operated by the Atlanta, Birmingham & Atlantic, as reported in 75 I. C. C. 645, endeavored to make it plain that its valuation had no relation to the worth of the properties."

Exception No. 7

The assistant director has disregarded all of the evidence introduced at the hearing of February 5, 1929.

The court held that the question remaining for determination under the terms of the condition and under the facts of this case is "the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it," and remanded the case to this commission for further hearing on this question.

In dealing with this word "hearing" the Supreme Court in B. & O. R. R. v. United States, 264 U. S., says:

"The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

The evidence in this case as to the value of the property acquired by petitioner for its stock or as to the amount received by petitioner for its stock as defined by the court is the testimony introduced at the February, 1929, hearing, based on the finding of value by this commission. This is the only evidence on which, under the law above quoted, and under the facts of this case as laid down by the District Court of the United States this commission can base a finding of the value of the properties acquired by petitioner. The

assistant director proposes that this commission disregard this evidence, disregard the finding of value made by it in accordance with the requirement of section 19a, disregard the findings of fact and of law made by the court, and require this petitioner to set up its investment at $9,261,043.87, which is just what the court enjoined.

Conclusion

Your petitioner, therefore, respectfully represents that the proposed report contains such error of fact and of law as to preclude its adoption by this commission. Your petitioner has filed a brief before the commission under date of February 25, 1929, on which it now relies and in which brief is set up the figures shown by this record based on the valuation by this commission. Your petitioner respectfully requests that it be given authority to set up its road and equipment at not less than $25,744,863.86.

Oral argument before the commission or the division is hereby requested.

Respectfully submitted.

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY.
GEO. B. ELLIOTT,
CARL H. DAVIS, *Counsel.*

WILMINGTON, N. C., *May 27, 1929.*

192 [Order of I. C. C. denying petition omitted in printing.]

193 IN UNITED STATES DISTRICT COURT

No. 497

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY

vs.

THE UNITED STATES OF AMERICA

Docket entries

June 14, 1928. Bill filed with order as to subpœna, etc.
" " " Subpœna issued.
" 18, " Affidavit as to service on Atty. Gen'l U. S., secty. I. C. C.
Service acknowledged by U. S. District Atty. N. D. of Ga.
Additional subpœnas issued.
" 19, " Affidavit as to service on C. W. Hager, U. S. dist. atty., filed.
" 25, " Acknowledged service by Asst. Sol. Gen'l U. S. filed.
" " " " " " Asst. chief counsel for I. C. C. filed.

July 7, 1928. Intervention of I. C. C. Com. and appearance of Edward M. Reidy, chief counsel, and Dan'l W. Knowlton of counsel, filed.
" " " Answer of Interstate Commerce Commission filed.
" 18, " Order extending time to file answer of U. S. to August 6th, 1928, filed.
Aug. 4, " Answer of the United States filed.
Sept. 8, " Order assigning case for trial before three judges on Oct. 12, 1928, filed.
18, " Petition to take testimony and order thereon filed.
Nov. 2, " Opinion of the court entered and filed.
" " " Decree that equities are with the complainant and order of I. C. C. of April 9, 1928, set aside and I. C. C. permanently enjoined from enforcing same, entered and filed.

194 Exhibits Filed—Finance Docket, I. C. C. No. 5470

1. Application filed April 16, 1926.
2. Supplemental application filed Dec. 8, 1926.

Finance Docket, I. C. C. No. 5454

3. Application filed April 9, 1926.
4. Supplemental application filed Nov. 26, 1926.
5. Return to questionnaire filed May 13, 1926.
6. Supplemental application filed Dec. 29, 1927.
7. Statement filed March 22, 1928, in 5454 and 5470.
8. Petition of applicants filed June 1, 1926.
9. Report and certificate filed Oct. 26, 1926.
10. Report and order filed Dec. 21, 1926.
11. Transcript of testimony taken at hearing held at Atlanta, Ga., and Exhibits 1 to 42.
12. Transcript of oral argument held at Washington, D. C., July 14, 1926.
13. Balance sheet A., B. & A. Ry. Co. at Dec. 31, 1926.
14. Testimony of E. L. Greene taken at Atlanta, Ga., Oct. 11, 1928.

195 In United States District Court

[Title omitted.]

Motion to file supplemental bill

To the honorable the judges of said court:

Now comes the Atlanta, Birmingham and Coast Railroad Company and respectfully represents unto this court as follows:

1

Your petitioner is the complainant in the original bill in this cause, which was brought against the United States of America and in which cause the Interstate Commerce Commission intervened.

2

Your petitioner presents herewith a supplemental pleading which it desires to file in this cause and which supplemental pleading is attached hereto. The said pleading sets out matters and things which have occurred in the subject matter of this litigation since the order of this court entered therein on the 26th day of October, 1928.

3

Your petitioner prays that a rule nisi requiring the defendant and the intervenor to show cause, if any they have, why your petitioner should not be allowed to file said supplemental pleading, and that the said supplemental pleading be allowed and filed and that hearing proceed thereon, and that the relief sought therein be granted.

Respectfully submitted.

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY,
By ROBT. C. ALSTON,
of Counsel.

F. B. GRIER,
CARL H. DAVIS,
BRANDON & HYNDS,
ALSTON, ALSTON, FOSTER & MOISE,
Solicitors for Complainant.

195A In United States District Court

[Title omitted.]

Supplemental pleading to bill in equity and order thereon

To the honorable the judges of said court:

Atlanta, Birmingham & Coast Railroad Company, humbly complaining, respectfully avers as follows:

I

Heretofore, to wit, on the fourteenth day of June, 1928, your orator filed in this court an original bill against the United States of America, seeking in said bill to restrain and enjoin the enforcement of an order of the Interstate Commerce Commission, therein described, dated the ninth day of April, 1928, which said order required that your orator should set up in its accounts, as representing its "investment in road and equipment" the sum of $9,261,043.87. The United States of America appeared by counsel and pleaded to the said cause. The Interstate Commerce Commission intervened and pleaded therein. At the trial of said cause evidence was introduced including, among other things, the entire record

covering the hearing and orders by the Interstate Commerce Commission.

Therefore, this court, presided over by three judges, organized in the manner provided by law, heard argument and on the twenty-sixth day of October, 1928, filed its opinion in said case and entered its order or decree enjoining the enforcement of the order of the Interstate Commerce Commission complained of. In its opinion and order, entered as aforesaid on October 26, 1928, this court found the following to be facts:

(a) That on the twenty-first day of December, 1926, in Finance Docket Nos. 5454 and 5470, consolidated, the Interstate Commerce Commission entered its order authorizing the Atlanta, Birmingham and Coast Railroad Company, your orator, to issue 51,800 shares of preferred stock of the par value of $100 and 150,000 shares of common stock of no par value; that said order, authorizing the issuance of said preferred and common stock, contained a condition which was in the words and figures following:

"Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of accounting, as provided in the classification of investment in road and equipment in the text of Account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; *and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.*" (Italics ours.)

(b) That, pursuant to the authority aforesaid, the Atlanta, Birmingham and Coast Railroad Co., your orator, issued the said preferred and common stock to a committee representing the bondholders of the Atlanta, Birmingham and Atlantic Railway Company, and, as such, the owners by purchase of the property, rights, and franchises formerly vested in said Atlanta, Birmingham and Atlantic Railway Company, and, in consideration of the issuance of said preferred and common stock, took a deed from said committee, as the owners of said property, whereby the said property, rights, and franchises, formerly of the Atlanta, Birmingham and Atlantic Railway Company, were conveyed to and vested in your orator, as consideration received by it for its preferred and common stock, issued as aforesaid. The court further found as a fact that the preferred stock, so issued to said committee, was distributed to the former bondholders of the Atlanta, Birmingham and Atlantic Railway Company and that the common stock was by said committee sold and delivered to Atlantic Coast Line Railroad Company, in consideration of the latter company's guarantee of $5,180,344.07 of the preferred stock of your orator, and of the assumption and payment of liabilities of the former Atlanta, Birmingham and Atlantic Railway Company, set up at $4,080,699.80, and that none of the moneys so paid and assumed by the Atlantic Coast Line Railroad Company,

aggregating with said preferred stock the sum of $9,261,043.87, as aforesaid, were paid to or received by Atlanta, Birmingham and Coast Railroad Company, your orator herein.

(c) The court further found that Account 41 of the classification of accounts of the Interstate Commerce Commission, referred to in the conditions contained in said order of the commission, required and provided that when capital assets are acquired by a railroad company and paid for with property other than cash—" the current cash value of the consideration " is to be entered in the accounts as the cost of said property.

(d) The court further found that the amount of the consideration received by Atlanta, Birmingham and Coast Railroad Company, your orator, should, under the terms of the order of the commission aforesaid, and also under the provisions of Account 41, " be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it."

(e) The court further found that the sum of $9,261,043.87 did not represent fairly the said current cash value of the property received by your orator, as aforesaid. Thereupon, this court entered its injunction order aforesaid, in the words and figures following:

" This case coming on for final hearing before a special court constituted as provided by statute, and composed of Hon. Richard W. Walker, United States circuit judge, Hon. Benjamin C. Dawkins and Hon. Samuel H. Sibley, United States district judges, after hearing evidence and argument, in accordance with an opinion filed herewith, it is considered, ordered, and decreed that the equities are with the complainant and that the order of April 9, 1928, complained of, in so far as the same fixes the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside, *and all persons interested in the enforcement of said order*, and their officers and agents, *are permanently enjoined from enforcing the same*, and that the supplemental application of the complainant, in which said order was entered by the Interstate Commerce Commission, stand for further hearing before said commission." (Italics ours.)

II

That thereafter, pursuant to the terms of the order of this court above quoted, the Interstate Commerce Commission set said supplemental application of the complainant for further hearing; that a hearing was had on the fourth day of February, 1929; that at said hearing your orator introduced in evidence the findings of the Interstate Commerce Commission in valuation Docket No. 1, Valuation of the Atlanta, Birmingham and Atlantic Railway Company, in which said proceedings the said Interstate Commerce Commission found and fixed, by order duly issued, the value of the property of the Atlanta, Birmingham and Atlantic Railway Company, as of June 30,

1914. Your orator also introduced evidence of net additions and betterments to said property made thereafter to January 1, 1927, which net additions and betterments, when added to the value found by the commission as of January 1, 1914, showed that the value of the property received by the Atlanta, Birmingham and Coast Railroad Company in exchange for its stock, as fixed by the Interstate Commerce Commission, plus additions and betterments as aforesaid, was, as of January 1, 1927, at least $25,744,863.86. Your orator further introduced and read into the record the following quotation from paragraph (i) of section 19a of the act to regulate commerce, to wit:

"All final valuations by the commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the act approved February fourth, eighteen hundred and eighty-seven, commonly known as the 'act to regulate commerce,' and the various acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

There was no other evidence of value of the property in question introduced at said hearing. There is no other evidence of the value of said property in the record in this case.

III

That thereafter, on the twenty-ninth day of July, 1929, argument was had before Division 4 of said Interstate Commerce Commission, and under date of October 9, 1929, the said commission, acting through said Division 4, issued its report of the Commission Upon Further Hearing. In this report it is stated that the amount of expense assumed by Atlantic Coast Line Railroad Company was $4,080,699.80.

"And it is this amount, added to the $5,180,344.07 received for the preferred stock that was intended by our order to be included in the road and equipment account of the new company."

The commission, in its said report, states—

"Counsel for the new company also contend that paragraph 2 of section 19a requires that the value found under that section be treated as prima facie evidence of the value to be included in the investment accounts of the new company; but we do not regard that value as pertinent or material evidence in the determination of investment, as that term is used in our accounting regulations."

and concludes as follows:

"Upon consideration of the record as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87.

The company will be expected to adjust its accounts in accordance with this finding within 60 days from service of this report."

This $9,261,043.87, so ordered to be set up on the books of your orator, is the identical figure, the use of which, as the current cash value of the property received by the Atlanta, Birmingham and Coast Railroad Company, was enjoined by the order of this court, above referred to.

IV

Your orator avers that the said order of the commission issued October 9, 1929, is, for each and all of the reasons set out in the original bill filed in this case, especially in paragraph 15 thereof, and for the reasons hereinafter set forth, unlawful, unjust and unreasonable, for that—

(a) It disregards and discards the facts found by this court in this case.

(b) It disregards and departs from the law applicable to this case as declared by this court, in that it directs the use of a figure as representing the value of the property acquired by your orator, as consideration for its stock, which has been specifically enjoined by this court, and also in that the figure required to be set up in the accounts of your orator as representing the said value is admittedly not the current cash value of said property, as required by this court.

(c) The figure required to be set up has been found by this court to be in conflict with the provisions of Account 41 of the commission's classification of accounts, and in conflict with the provisions of the condition attached by the commission to its authority to issue said stock.

(d) There is no evidence in this record to support the use of the figure $9,261,043.87 as the value of the property which this court has found was received by your orator for its stock.

(e) The figure required to be set up as the value of the property received by your orator is contrary to the uncontradicted evidence in the record.

(f) The figure required to be set up, to-wit, $9,261,043.87—is in plain conflict with and contrary to the act of Congress fixing the prima facie value of such property at the figure found by the commission as the result of its investigation under the provisions of section 19a of said act.

(g) The figure fixed by the commission, to be set up as the cost or investment of your orator in its property and investment account, does not purport to be or represent the cost of said property but, on the contrary, is admittedly the figure at which the owners of the stock of your said orator sold the same to the present holders thereof, and this court has found and held that your orator did not receive the same or any part thereof.

(h) The report and order of the commission assumes that the commission has power to fix not only the form but also the facts to be set up in the accounts of the carriers under its jurisdiction.

(i) The order of the commission requires a balance sheet which does not purport to contain a correct statement of the current cash value of capital assets.

(j) The order requires the keeping of the records of your orator in such way that they will not show either the investment made by your orator, nor the value for rate-making purposes, nor for recapture of earning purposes, nor for any other practical purpose. The accounts of your orator, if kept as required by this order, will make a useless and incorrect record which your orator will be unable to correct by the records because it can, under the law, then keep no other or different records as to this subject.

(k) The order of the commission was arrived at by treating its said prior valuation of the said properties as not "pertinent or material evidence in the determination of investment as that term is used in our accounting regulations," which said term has been determined by the court as requiring in this case the ascertainment of the fair cash value of the said properties as of the date of their acquisition by the complainant.

(l) The order of the commission is in disregard and is contrary to all of the evidence in this record bearing on the value of the properties so acquired by your complainant and is arbitrary and void.

V

Your orator waives discovery under oath of the defendant and the intervenor and prays as follows:

(a) Your orator renews the prayers contained in its original bill;

(b) That it be allowed to file this supplemental pleading;

(c) That a day be fixed for hearing this cause on the original bill and this supplemental pleading;

(d) That a temporary restraining order be granted staying or suspending the said orders of the Interstate Commerce Commission referred to in this supplemental pleading and in the original bill;

(e) That a day be fixed for the hearing of this cause on interlocutory injunction; that said interlocutory injunction be issued, restraining and enjoining the defendant and all persons at interest, and their officers, agents, and employees from enforcing the said orders of the said commission complained of in the original pleading and in this supplemental pleading; that the said orders be set aside for each and all the grounds set out in the original and supplemental pleadings.

(f) That upon final hearing of this cause the defendant and all persons at interest in said orders of the commission, their officers, agents, and employees, be permanently enjoined from enforcing the same, and that the said orders be set aside, and your orator be directed to set up on its books the value of the property acquired by it as shown by the record in this cause.

(g) That the order of October 9, 1929, be held to be invalid and illegal upon each and all the grounds herein set out.

(h) That your orator have such other and further relief as may be meet and proper and that it have general relief.

[CORPORATE SEAL.]

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY,
By E. L. GREENE, *Auditor.*

F. B. GRIER,
CARL H. DAVIS,
BRANDON & HYNDS,
ALSTON, ALSTON, FOSTER & MOISE,
Solicitors for Complainant.

STATE OF GEORGIA,
Fulton County

Before me, the undersigned officer, duly authorized to administer oaths in said State and county, personally appeared E. L. Greene, who, being by me duly sworn, deposes and says, on oath, that he is auditor of the Atlanta, Birmingham and Coast Railroad Company; that he has knowledge of the matters and things mentioned in the foregoing bill and that the statements therein made are true, except when made upon information and belief, and then he verily believes them to be true.

E. L. GREENE.

Sworn to and subscribed before me, this 20th day of November, 1929.

[NOTARIAL SEAL.] MARGERY DAVENPORT.

Notary public Georgia State at large. My commission expires Dec. 26, 1932.

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 5454*—Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co.

Submitted July 29, 1929. Decided October 9, 1929

Upon further hearing, application of commission's accounting regulations to statement of the investment accounts of the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927, considered and accounting prescribed. Previous reports, 117 I. C. C. 181 and 439.

George B. Elliott and C. H. Davis for Atlanta, Birmingham & Coast Railroad Company.

Report of the Commission upon Further Hearing, Division 4, Commissioners Meyer, Eastman, and Woodlock

BY DIVISION 4:

In the original report, certificate, and order in these proceedings, dated October 26, 1926, 117 I. C. C. 181, we authorized a committee

* This report also embraces Finance Docket No. 5479, application of Atlantic Coast Line Railroad Company, for authority to acquire control of Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock and to assume certain obligations.

representing the bondholders of the Atlanta, Birmingham & Atlantic Railway Company, hereinafter called the Old Company, and a new corporation to be known as the Atlanta, Birmingham & Coast Railroad Company, hereinafter called the New Company, to acquire and operate the line of railroad of the Old Company, but deferred action upon the application of the New Company to issue capital stock and of the Atlantic Coast Line Railroad Company to acquire control of the New Company. In a supplemental report and order, issued December 21, 1926, 117 I. C. C. 439, the New Company was authorized to issue $5,180,344.07 of preferred capital stock and 150,000 shares of common stock without nominal or par value, and the Atlantic Coast Line was at the same time authorized to acquire control of the New Company by purchase of its capital stock.

Under the reorganization plan thus authorized to be carried into effect, outstanding bonds and scrip of the Old Company amounting to $8,633,906.78 were exchange for preferred stock of the New Company, at the ratio of $100 of bonds for $60 of stock, thus requiring the issue of the $5,180,344.07 of preferred stock of the New Company, above mentioned. This stock was to be preferred as to cumulative dividends at the rate of 5 per cent per annum. The additional 150,000 shares of no-par common stock issued by the New Company was acquired by the Atlantic Coast Line in consideration of the payment of that company of current outstanding obligations of the receiver and of various expenses in connection with the reorganization, amounting, as a whole, to upward of $3,500,000. The Atlantic Coast Line also guaranteed dividends on the preferred stock. The New Company, although under complete control of the Atlantic Coast Line, was to be operated as a separate entity and was to maintain separate accounts. It was recognized that the unusual circumstances might give rise to questions concerning the proper statement of the capital accounts of the New Company, and the order of December 21, 1926, authorizing issuance of preferred and common stock by the New Company, contained the following proviso:

"Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of Account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

At the time of the issuance of this order, the amount of the expenses assumed by the Atlantic Coast Line had not been determined, but was estimated to be about $3,677,500. It has since been determined that the true amount is $4,080,699.80; and it is this amount, added to the $5,180,344.07 received for the preferred stock, that was intended by our order to be included in the road and equipment account of the New Company.

In response to this requirement, however, the New Company proposed to include in its road and equipment account as of January 1, 1927, $29,471,859.00, an amount recommended by a firm of certified public accountants, said amount to be based upon our valuation of the railroad properties as of 1914 under section 19a of the interstate commerce act, as reported in 75 I. C. C. 645. The theory upon which this proposal was made will be discussed later. Our bureau of accounts objected to the proposal and insisted upon the entry of $9,261,043.87, made up of the two amounts above mentioned. The New Company thereupon made a supplemental application to us for such construction of the order of December 21, 1926, as would support its proposed accounting, and for oral argument. The petition was denied on April 9, 1928. The applicant then sought an injunction against the enforcement of our order, as construed by us, and the District Court for the Northern District of Georgia, Atlanta Division, on October 26, 1928, set the order aside, leaving the supplemental application to "stand for hearing" before us in due course. Atlanta, B. & C. R. Co. v. United States, 28 F. (2d) 885. In concluding its discussion, the court said:

"While the commission might, on the record already before it, properly refuse to allow its valuation of the railroads as of 1914 to be the measure of their fair value when acquired by the Coast Company, nevertheless to fix the value suggested by Director Wylie without a hearing would be arbitrary and unlawful."

In response to the apparent view of the court that the applicant had not been afforded proper opportunity for support of its proposed accounting, and to afford the applicant additional opportunity for the presentation of any evidence it might desire to offer, we reopened the proceedings for further hearing, which was held on February 4, 1929. At this hearing the applicant placed in evidence an exhibit purporting to show the value of the carrier properties involved in the proceedings, made up of the value found in our report in the valuation proceeding, 75 I. C. C. 645, plus additions and betterments to December 31, 1926, making a total of $24,481,893.86, and a value of property held by the applicant for purposes other than those of a common carrier on the same date of $1,262,970. It also placed in evidence a proposed balance sheet as of January 1, 1927, showing the above amounts as "investment in road and equipment" and "miscellaneous physical property," respectively. In the same proposed balance sheet the liability on account of capital stock is shown as $27,001,407.26. The applicant introduced no evidence showing the results of operation by the new company, although attention was directed thereto by the presiding examiner.

The principal text of road and equipment account No. 41, "Cost of road purchased," mentioned in the order of December 21, 1926, is as follows:

"This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only

the road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made."

The text contains auxiliary provisions which are not pertinent to this discussion.

It should be noted further that the provisions stated under the headings of various accounts of the classification are all governed by the general principles of the classification, as stated in the general instructions, from which we quote as follows:

"The accounts prescribed in this classification are designed to show the investment of the carrier in property devoted to transportation service."

And again—

"The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification in other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it."

The applicant holds, in effect, that since the consideration given by the New Company was "other than money," its "money value" must be measured by the value of the property acquired, and that the only evidence in the record as to the value of the property is that derived from our investigations pursuant to the requirements of section 19a. No question is raised by the applicant as to the propriety of accepting the par value of the preferred stock $5,180,344.07 as its true value for the purpose of the accounting, but it contends that the value assignable to the common stock should be measured by the value of the property acquired by the New Company, less the value of the preferred stock; in other words that the minimum amount that can be set up as its investment in road and equipment is $24,481,893.86, arrived at as already described.

That the court in its decision above cited did not accept the theory of the carrier is plainly evidenced by its language, from which we quote as follows:

"The commission's classification rule, formulated for stating original investment in road and equipment, whether constructed by the accounting carrier or purchased by it, evidently aimed to avoid 'watered' or even estimated values, and to reflect only actual outlays. Cost and not value is everywhere spoken of. But rule 41, dealing with a purchased road, of necessity requires that, when a road is paid

for otherwise than by cash, 'the current cash value of the consideration' is to be entered in the accounts. The consideration here was stock, preferred and common. The valuation of the preferred stock at $5,180,000 is not disputed. Two methods of valuing the common stock are contended for—one, that it was worth the value of the roads acquired, less the value represented by the preferred stock; the other, that it was worth what the Coast Line Company paid for it in cash, $4,080,000. The requirement of the order of December 21, 1926, that the common stock must be reckoned 'on a basis not in excess of the amount received therefor,' comes to the same thing as the requirement of rule 41, and meets the same divergent constructions. It cannot be said with accuracy that the money paid by the Coast Line Company was received by the Coast Company for its stock. The Coast Company received for the stock the deed of the bondholders' representatives covering the railroads, and they in turn sold the common stock to the Coast Line Company, and for a consideration, not only of $4,080,000 actually paid, *but also of heavy guaranties of dividends on the preferred stock over and above its par already allowed in this valuation.*

"The words of the order of December 21, 1926, were acted on by the parties and should have their fair operation. We think they require that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the *fair cash value* of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it. We do not think this valuation is fixed, either by the value as of 1914, made by the commission, or by what the Coast Line Company was willing to pay and assume, though both may be matters important to be considered in making a fair valuation; for, on the one hand, the Coast Line Company may not have paid the full fair value in its trade with the bondholders' representatives, while, on the other hand, hearings, both before this court and before the commission, had pending the sale, strongly indicated that *these railroads, circumstanced as they were, were not then worth, for sale or operation, nearly what had been originally invested in them.*" (Italics ours.)

In substance, the transactions here under consideration were as follows:

The Atlantic Coast Line itself, or through the new corporation which it caused to be formed, acquired the railroad properties of the Old Company by the payment of $4,080,699.80 in cash for the liquidation of various claims, and by the issuance to the bondholders of $5,180,344.07 of preferred stock of the New Company, on which it granted dividends at 5 per cent per annum. There appears to be no other payment made or obligation incurred. The nature of the transactions is not changed by the fact that the Atlantic Coast Line for its own purposes took title to the property in the name of its subsidiary. Although the representatives of the New Company now insist strongly that the identity of that company must be care-

fully distinguished from that of the Atlantic Coast Line, and that the New Company's stock was not in fact issued to the Atlantic Coast Line, that view was not held by the proponents of the reorganization plan, as appears from the record. Article III of the "Plan and agreement of reorganization" as submitted to us contains the following provision:

"The Railroad Company (Atlantic Coast Line) shall be entitled to receive the entire issue of 150,000 shares without par value of common stock of the New Company *in exchange for the cash which the Railroad Company shall provide.*" (Italics ours.)

The proviso in the order of December 21, 1926, previously quoted, was an application of the accounting orders to these transactions. The consideration given by the New Company, considered as a separate entity, was in the form of stock, preferred and common. In setting up the value of the preferred stock we required that it be reckoned on a basis not in excess of its par value, which was $5,180,344.07; and the order further provided that the cash value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line must be reckoned on a basis not in excess of the "amount received therefor." As already stated, this amount has since been found to be $4,080,699.80. It was urged upon the court, which apparently gave weight to the contention, that the issue of common stock should be assumed to cover not only this amount, but an additional sum in recognition of the obligation of the Atlantic Coast Line to pay dividends upon the preferred stock in case the earnings of the New Company should not be sufficient.

As stated in the original and supplemental reports, dividends on the preferred stock were guaranteed by the Atlantic Coast Line at the rate of 5 per cent per annum, payable in semi-annual installments, such dividends to be cumulative and to accrue from January 1, 1928. The stock is redeemable at the option of the issuing company in whole, but not in part, on any semi-annual dividend date after January 1, 1935, at 103 and accrued dividends. Upon the winding up or dissolution of the corporation, the holders of the preferred stock are to receive par value of the stock and accrued dividends before recognition of common stock. The common stock is to have exclusive voting power except in case of default in dividend payment on the preferred stock for two successive dividend dates; in such case the preferred stock is to have exclusive voting power so long as the default shall continue. The correctness of this statement is not questioned. It thus appears that by its guaranty of dividends on the preferred stock the Atlantic Coast Line secured itself against default and insured its retention of control of the New Company through the voting rights of the no-par stock which it received. Considered by itself, and assuming that it must be regularly and permanently relied upon, a guaranty of dividends at 5 per cent might be computed at the par value of the stock upon which the dividend is paid. In this case, however, the preferred

stock is subject to redemption after a short period of years, and by the exercise of this privilege the liability under the guaranty can be terminated by the purchase of the stock at a premium of 3 per cent. Meanwhile the preferred stockholders have no voice in the corporation; and upon liquidation, which is also within control of the Atlantic Coast Line, they have preference in the distribution of assets to the extent of par value of their stock. The benefits of the guaranty and of interest in the assets of the New Company through ownership of its preferred stock can not be realized concurrently. Under these circumstances, it seems improper to assign a value to the guaranty in addition to the par value of the stock guaranteed.

Even though we accept the theory that the entries in the accounts of investment should be fixed on a basis of the "fair cash value" of the properties acquired rather than that of the amount paid for them, there is no evidence of lack of parity between the cash value of the consideration given and that of the property received, considered as that of a *going* concern. The history of these properties and the circumstances leading to these proceedings are given in considerable detail in the report of October 26, 1926, 117 I. C. C., at pages 182 to 185, inclusive. The facts are undisputed. As there stated, the properties had been operated at great losses for many years, due principally to inherent traffic weakness, although aggravated by a strike of employees. Under these circumstances great difficulty was met in finding a purchaser at any price, with the obligation to operate. As further said in that report, experience only would determine whether or not the investment of the Atlantic Coast Line would be profitable even at the price paid. The contention was then made, but in that instance by the stockholders of the Old Company, that the value found by us under section 19a was evidence of inequity in the price to be paid, but it was pointed out that there was no necessary relationship between the cash or exchange value and value for rate-making purposes, and that the courts had recognized the distinction. From the standpoint of the former owners, the railroad properties had proven to be a liability rather than an asset; and it is apparent that their prospective value to the Atlantic Coast Line lay in their utility as adjuncts of its operating system rather than in the ability of the New Company to earn a profit as a separate entity. If the prospect were otherwise, it would be impracticable to recognize that fact in a definite assignment of value.

In considering the propriety of the accounting rule which has been applied in this case, it is to be borne in mind that the "comparative general balance sheet" prescribed by us, considered in connection with the instructions for its use, does not purport to contain a correct statement of the current cash value of capital assets. Such value is variable, depending upon a multitude of circumstances which change from day to day. It is possible, however, to state with entire or approximate accuracy the cash or equivalent investment at

the time it is made; and it is this amount which our accounting rules require to be recorded in the balance sheet. If a carrier, for example, purchases land for $200,000 which is actually worth considerably more or considerably less than this amount, nevertheless it is $200,000 which must be recorded in the investment account and the accounts of all carriers which we supervise are kept uniformly on this basis. However, the reflection of such investment in the balance sheet of a purchasing company is usually a much nearer approach to a correct statement of asset value than would be either the original or the reproduction cost of the property. That is notably true in this case. The report of valuation of the railroad properties operated by the Old Company, 75 I. C. C. 645, endeavored to make it plain that such valuation had no relation to the market worth of the properties, but was merely a sum upon which the carrier was entitled to earn a fair return, if it could do so. That the New Company could, as a separate and independent carrier, earn such a return is more than doubtful; on the other hand, the mere fact that the investment stated in the balance sheet does not correspond with value for rate-making purposes in no way prevents the carrier from earning a fair return on that value.

The foregoing recital of facts and discussion thereof were included, in substance, in a proposed report which was served upon the carrier in accordance with our rules of practice. The applicant filed exceptions to the report and has been heard in oral argument thereon. In its exceptions and argument, the applicant repeats the contention that our accounting rules, and particularly those relating to account 41, "Cost of road purchased," permit and require that under the circumstances of this case the amount set up as investment shall be measured by the value of the property acquired, as determined under section 19a. We feel that this contention is already sufficiently answered in this report. The applicant's principal contention, however, appears to be that, regardless of the general application of the rule, we are bound by the court's decision in this case to allow an investment the value as determined by us under section 19a and as shown by the exhibits filed at the supplemental hearing.

The decision does not support the applicant's contention. On the contrary, it clearly shows that in the opinion of the court the claim for the use of the full value found by us under section 19a could not be sustained. It is true that the court did not accept the amount proposed by our bureau of accounts as a sufficient reflection of "fair cash value" either of the properties acquired or of the securities issued; but upon examination of the decision to determine the basis of this view, it is found in the assumption that the guaranty of dividend given by the Atlantic Coast Line was not given proper consideration by us. Responsive to this view, we have carefully reconsidered the record in its bearing upon the question. The function and value of the guaranty are discussed in preceding pages. The correctness of the analysis has not been questioned by the applicant. The value

of the guaranty is reflected in the value assigned to the preferred stock, which, as repeatedly stated, is reckoned at par. Without the guaranty, no value could have been assigned to it; and, as already indicated, an additional assignment of value would be an unwarranted duplication.

Counsel for the New Company also contend that paragraph (i) of section 19a requires that the value found under that section be treated as prima facie evidence of the value to be included in the investment accounts of the New Company; but we do not regard that value as pertinent or material evidence in the determination of investment, as that term is used in our accounting regulations.

Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. The company will be expected to adjust its accounts in accordance with this finding within 60 days from service of this report.

By the commission, Division 4:

[SEAL.] GEORGE B MCGINTY,
Secretary.

In United States District Court

[Title omitted.]

Order

The Atlanta, Birmingham & Coast Railroad Company, the Complainant in the above-stated cause, has presented petition to be allowed to file a supplemental pleading in this cause, and with said petition has presented the said supplemental pleading, and moves the court to allow the same to be filed.

It is ordered that the same be filed, subject to objections which may be made thereto by the United States and by the Interstate Commerce Commission at the time and place hereinafter provided for. And the said Atlanta, Birmingham & Coast Railroad Company, in its said supplemental pleading, which has been duly verified, seeks an order temporarily staying or suspending an order of the Interstate Commerce Commission dated the 9th day of October, 1929, and as well an interlocutory injunction and permanent injunction.

It is ordered that the bill in this cause and the supplemental pleading thereto be set for hearing upon the prayers for an order temporarily staying or suspending said order of the commission, and as well upon its prayer for an interlocutory injunction at a time and place to be fixed as soon as practicable by further order, before a court to be composed of three judges assembled in the manner contemplated by the acts of Congress in such cases made and provided.

It is further ordered that copy of said supplemental pleading and this order and the petition to file said supplemental pleading be served upon the Interstate Commerce Commission and the Attorney General of the United States at least five days before the date to be fixed for such hearing, and that this shall be served upon the defendant, the United States of America, and upon the said intervenor, the Interstate Commerce Commission, as required by the statutes in such cases made and provided.

It is further ordered that any person at interest may intervene in this cause, as is contemplated by the acts of Congress in such cases made and provided. The undersigned will immediately call two other judges, at least one of whom will be a circuit judge, to his assistance to hear and determine the application for restraining order and for interlocutory injunction.

Dated November 20, 1929.

SAMUEL H. SIBLEY,
United States Judge.

196 In the District Court of the United States for the Northern District of Georgia, Atlanta Division

[Title omitted.]

Answer of Interstate Commerce Commission to supplemental bill of complaint

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, hereinafter called the commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the original and supplemental bills of complaint contained, for answer thereunto or unto so much or such parts of said supplemental bill as it is advised that it is material for it to answer, answers and says:

I

Answering the first paragraph of paragraph 1 of the supplemental bill, the commission admits that the allegations therein contained are true, except that the commission denies that its order of April 9, 1928, therein referred to, required petitioner to set up in its accounts, as representing its "Investment in road and equipment," the sum of $9,261,043.87. In this connection the commission refers the court to its order of April 9, 1928, contained in the original bill in paragraph fourteen, for its contents in the premises.

197 Answering the second paragraph, and subdivisions (a), (b), (c), (d), and (e), of Paragraph I of the supplemental bill, the commission respectfully refers the court to the court's opinion and decree referred to in said subdivisions, for full and complete informa-

tion in respect to the contents thereof, and concerning the court's findings and decree in the premises. The commission neither admits nor denies that petitioner's interpretation thereof is the correct one.

II

Answering paragraphs II, III, IV, and V of the supplemental bill, the commission admits and alleges that, following the entry of the decree of this court, referred to in subdivision (e) of Paragraph I of the supplemental bill, it made and entered its report on further hearing, referred to in Paragraph III, which report is dated October 9, 1929, and which is attached to the supplemental bill as an exhibit. The commission alleges that, prior to the making, entering, and serving of said report of October 9, 1929, it conducted the investigation, and accorded to the parties, including petitioner herein, the full hearing provided for in the interstate commerce act; that at said hearing a large volume of testimony and other evidence, bearing upon the matters covered by said report of October 9, 1929, was submitted to the commission for consideration on behalf of the parties to said proceedings, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the commission for determination on behalf of said parties by their respective counsel, whereupon the commission determined
198 said matters, and entered and served upon the petitioner said report of October 9, which included the commission's findings of fact, decision, and conclusions in the premises, and that upon the evidence aforesaid, and as shown in and by said report of October 9, heretofore referred to and made a part of the supplemental bill, the commission made the findings and stated its conclusions upon which said report of October 9, is based.

III

Answering particularly allegations contained in Paragraph II of the supplemental bill, the commission admits that on the 4th day of February, 1929, the hearing referred to by petitioner in said paragraph was held, and that at said hearing evidence was introduced by petitioner herein, through its counsel. The commission denies the other allegations contained in said paragraph.

Answering particularly allegations contained in Paragraph III of the supplemental bill, the commission admits that the statements contained therein, purporting to be extracts from the commission's report of October 9, 1929, are correct extracts from said report, but the commission respectfully refers the court to the entire opinion of the commission for its findings and conclusions in the premises. The commission particularly denies that by its report of October 9, 1929, it ordered petitioner to set up on its books the figure of $9,261,043.87,

or any other figure. In this connection the commission alleges
199 that no order was entered by it on October 9, 1929.

Answering particularly allegations contained in Paragraph IV of the supplemental bill, the commission renews its objection to the reference in said paragraph to its said report of October 9 as an order; denies the allegations contained in subdivisions (a), (b), (c), (d), (e), (f), (i), (j), (k), and (l) of said paragraph; admits, as alleged in subdivision (g), that the figure fixed by the commission is the figure at which the owners of the stock of petitioner sold the same to the present holders thereof, and respectfully refers the court to the report mentioned in subdivision (h) for information as to its contents. The commission further denies that its action is unlawful, for the reasons, or for any of the reasons, set forth in said paragraph, or for any other reason or reasons.

Further answering the allegations contained in the supplemental bill, the commission alleges that under the accounting rules of the commission, value is not to be used where cost is known; that the commission's figure of $9,261,043.87 includes all actual cost to date, and that if the guaranty of dividends on preferred stock causes any additional cost to petitioner in the future, that cost, when definitely determined, can then be added to the investment account.

Further answering the allegations contained in the supplemental bill, the commission alleges that said report of October 9, 1929, was duly made by it and duly served upon petitioner, under and in accordance with authority conferred upon the commission by the provisions of the interstate commerce act. The commission further alleges that its aforesaid findings and conclusions were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the commission in said proceedings as aforesaid.

200 The commission further alleges that, in making said report of October 9, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention, on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the supplemental bill of complaint herein.

The commission further alleges that said report of October 9, was not made either arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said report it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the commission denies each of and all the allegations to the contrary contained in said supplemental bill.

With the exception of the allegations expressly admitted herein by it, the commission denies each of and all the material allegations contained in the supplemental bill, in so far as they conflict either with the allegations herein, or with either the findings or conclusions of fact included in said report of October 9, 1929.

All of which matters and things the commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that the supplemental bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION.
By E. M. REIDY, *Attorney.*

D. W. KNOWLTON,
Of Counsel.

201 [*Duly sworn to by Thomas F. Woodlock; jurat omitted in printing.*]

202 In United States District Court

[Title omitted.]

Answer of United States of America to the supplemental bill

First defense

United States for its first defense to the supplemental bill filed herein against it says:

This court is without jurisdiction to entertain the supplemental bill. Although, as alleged in the supplemental bill, the Interstate Commerce Commission, in the proceeding therein mentioned, issued its Report of the Commission Upon Further Hearing, on October 9, 1929, that commission did not and has not issued an "order" in said proceeding, against complainant within the meaning of the Commerce Court act (36 Stat. 539) and urgent deficiencies act (38 Stat. 219) (U. S. C. Title 28, Secs. 41 (27 and 28), 43 to 47).

Wherefore, United States moves to dismiss the supplemental bill and prays that an appropriate order may be entered.

Second defense

United States for its second defense to the supplemental bill filed herein against it says:

203 I

It admits the allegations of subdivision I, with these exceptions: (a) It denies that the commission's order of April 9, 1928, required complainant to set up in its accounts, as representing its "Investment in road and equipment," the sum of $9,261,043.87; (b) for full, complete, and accurate statement of the facts found by the court in said opinion and order of October 26, 1928, the court is respectfully referred to said opinion and order (28 F. (2d) 885), and defendant neither admits nor denies that the facts alleged in said subdivision are those found by this court.

II

United States admits the allegations made and contained in subdivisions numbered II and III of the supplemental bill; but alleges

that under the commission's accounting rules, value is not to be used where cost of the property is known, and that $9,261,043.87 was found by the commission to include all cost of said property to date.

III

United States denies the allegations made and contained in subdivision numbered IV of the supplemental bill.

IV

United States, further and affirmatively answering said supplemental bill, alleges that said Report of the Commission Upon Further Hearing, rendered October 9, 1929, was made and issued by the commission after full hearing had been accorded complainant; that in rendering said report the commission carefully weighed and considered the testimony submitted to it in that proceeding; that the commission's findings in said report set forth are fully supported by testimony of record before it in said proceeding; and that in the rendition of said report and its findings and conclusions based thereon, the commission did not act arbitrarily or otherwise in contravention of law.

204 Wherefore, having fully answered the supplemental bill, United States prays that the relief therein prayed be denied and that said bill be dismissed with costs to the complainant, and that it have such other and further orders, decrees, or relief as may be just and proper.

JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

CLINT W. HAGER,
United States Attorney.

205 [*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

206 In United States District Court, Northern District of Georgia, Atlanta Division

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, complainant, vs. UNITED STATES OF AMERICA, DEFENDANT	No. 497, in equity.

Opinion on supplemental bill

This litigation was previously before the court in Atlanta, Birmingham & Coast Railroad Company v. United States, 28 F (2d) 885. The recitals there made need not be repeated. We continue to

call the complainant, for brevity, the Coast Company. At that time an order of the Interstate Commerce Commission made upon a supplemental application of the Coast Company for interpretation of a former order, dated December 21st, 1926, touching the accounts of the company, was set aside because granted without a hearing. A hearing has since been had before the commission in which the only additional evidence offered was by the Coast Company, consisting of proof of the valuation as of June 30th, 1914, of the railroads in question, made by the commission under section 19a of the interstate commerce act, with adjustments because of retirements, additions, and betterments to January 1st, 1927, thus arriving at a value as of the latter date of $29,471,859.00. The commission, by a report dated October 29th, 1929, announced its final conclusion as follows:

"Counsel for the New Company (the Coast Company) also contend that paragraph 2 of section 19a requires that the value found under that section be treated as prima facie evidence of the value to be included in the investment accounts of the New Company; but we do not regard that value as pertinent or material evidence in the determination of investment, as that term is used in our accounting regulations. Upon consideration of the record as
297 supplemented we find and conclude that the amount to be included in the balance sheet of the New Company, representing investment in road and equipment as of January 1st, 1927, may not exceed $9,261,043.87. The company will be expected to adjust its accounts in accordance with this finding within sixty days from the service of this report."

The report was served. By a supplemental proceeding here the Coast Company seeks to set this conclusion aside as an unlawful order of the commission by virtue of 28 United States Code 41(28).

1. It is contended by the United States that what has been quoted is not an order of the commission, but a mere report preliminary to an order, and that therefore this attack is premature. While in form it is such a report as is often made preliminary to an order, under the circumstances of this proceeding we think it was intended by the commission as the final statement of its requirement in the premises, to be followed by nothing further. The time limit of 60 days from service fixed for compliance would otherwise have no meaning. The Coast Company treated it as an order in attacking it before this court. The court, to avoid consideration of a restraining order, requested the commission to extend the effective date of this requirement to give time for a full hearing. The commission did not disclaim its action as final, but did extend the time of compliance for sixty days more. We think the requirement is to be treated as an order, disobedience of which could be punished, and which may be reviewed in this court for the reasons stated in our former opinion.

2. Upon the merits the United States contends that the figures $9,261,043.87, fixed by the commission, being the undisputed total of

the preferred stock of the company and what was actually paid out by the Atlantic Coast Line Company for the acquisition by it of the no-par common stock of the Coast Company, is therefore the only possible figure to represent the investment in these railroads. The vice of the position lies in confusing the two companies. It is
208 not the investment of the Coast Line Company but of the Coast Company which is in question. The entries are to be made upon the books of the latter and not of the former company, and in accordance with the special requirements of the order of December 21st, 1926, and the general requirements of the commission's accounting regulation No. 41, headed "Cost of road purchased." The first paragraph of the order of December 21st, 1926, was entered upon the application of the Coast Company to be allowed to issue its stock, and the Coast Line Company was not mentioned therein. The concluding words "Provided, however, and authority to issue said stock is granted upon the express condition that * * * the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received thereof," can mean only the amount received by the Coast Company for its stock, and not what was paid by the Coast Line Company to the bondholders committee for it. The Coast Company received, and was, under the reorganization plan, to receive not a dime of money, but only a deed to the railroads. So far as it was concerned it paid no cash for the deed, but only its stock. The commission accounting regulation No. 41, referred to expressly in the order of December 21st, 1926, requires "where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis." The stock which constituted the consideration for the roads must, therefore, be valued on a cash basis. Because it represented on January 1st, 1927, nothing except the railroads purchased, it can be valued only by valuing them. So that the requirement of the regulation and of the condition in the order come practically to the same thing, each necessitating a valuation of the railroads as of January 1st, 1927. Notwithstanding the close connection between the Coast Line Company and the new Coast Company, they are separate corporations. The New Company is but
209 beginning its career. Its stockholders may change and creditors having separate interests may arise. Separate corporate organization can sometimes be disregarded in order to defeat fraud or reach the true rights of stockholders and creditors, but the separate accounting of railroads under the interstate commerce act presents no such case. This separately organized railroad enterprise is entitled to have its separate and independent accounts under the usual regulations, and this was plainly indicated by the order of December 21st, 1926. The entry here in question may hereafter constitute admissible evidence in fixing rates, recapture of profits, ascertainment of depreciation, assessment of advalorem taxes and the like. The purchase of the railroads by the Coast Company with its

stock was its own transaction. It was unaffected (save that the foreclosure sale was held up until the Coast Line Company should fully pay its assumptions to the bondholders committee) whether those assumptions had turned out to be $3,677,500.00, as was first supposed, or $4,080,697.00 as turned out to be true, or $10,000,000.00 as might have happened. In any case the cash value of the railroads diminished by the undisputed value of the preferred stock represents the investment of the common stock under accounting regulation No. 41 and under the terms of the enabling order of December 21st, 1926. The cash payments by the Coast Line Company in acquiring the common stock from the bondholders committee did not necessarily measure its value, nor did they make the purchase by the Coast Company of the railroads a cash transaction so as to put into operation the provisions of regulation No. 41 touching cash purchases. It is true that regulation seeks to have recorded the historical fact of the amount invested rather than the value of the investment. The necessary exception recognized in the regulation does exist when, as here, the purchasing company does not pay
210 cash. The Coast Line Company's purchase of the stock has this much to do with it: It is a voluntary cash transaction occurring at the critical time and having a close relationship to the value of the railroads, inasmuch as it expresses their value as estimated by the bondholders committee and the Coast Line Company. It is evidence, but not the exclusive nor conclusive evidence of the then actual cash value of the railroads.

3. We also disagree with the contention of the Coas Company that their accounting figure should be fixed on the basis of the commission's valuation of the railroads as of June 30th, 1914, corrected as above stated. The railroads were then owned by another company and the Coast Company's books are not to be in this respect a mere continuation of the predecessor's investment account. A railroad property very valuable in 1914 may, in 1927, have become of slight value, not because of physical changes in the property, but because of general or special conditions preventing its successful operation. But the value authoritatively and expertly fixed in 1914 would, along with testimony connecting it with January 1st, 1927, be admissible evidence to ascertain the value at the latter date. The commission's valuation of railroads is expressly made prima facie proof in all proceedings under the commerce act. This is such a proceeding. It follows that the commission's conclusion that this valuation was " neither pertinent nor material evidence in the determination of investment " was erroneous in this case where the investment was not of cash but must be determined by the ascertainment of value. A fair estimate of the value of the property on January 1st, 1927, would require consideration not only of the cash dealings at that time respecting it and of the conditions then surrounding its

use but also of the original cost or value of it. Because of the refusal to consider the latter evidence, we think the order unlawfully arrived at. The commission's report makes but scant reference to value, and that reference is only by way of makeweight. It goes rather on the idea that the case is controlled by the cash expenditures of the Coast Line Company. For these reasons we think the order must again be set aside and the matter reopened for further consideration by the commission. January 18th, 1930.

SAML. H. SIBLEY,
U. S. Judge.

211 In United States District Court, Northern District of Georgia, Atlanta Division

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, COMPLAINANT

vs.

UNITED STATES OF AMERICA, DEFENDANT

Decree

Filed Jan. 18, 1930

This case coming on for final hearing before a special court constituted as provided by statute, and composed of Hon. Richard W. Walker, United States circuit judge, Hon. Benjamin C. Dawkins and Hon. Samuel H. Sibley, United States district judges, after hearing evidence and argument, in accordance with an opinion filed herewith, it is considered, ordered, and adjudged that the equities are with the complainant, and that the order of October 29th, 1929, of the Interstate Commerce Commission herein complained of, in so far as the same fixes the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside and that the persons interested in the enforcement of said order, and their officers and agents, are permanently enjoined from enforcing the same, and that the supplemental application of the complainant on which said order was entered by the Interstate Commerce Commission stand for further hearing before said commission.

This January 18th, 1930.

R. W. WALKER,
United States Circuit Judge.
BEN C. DAWKINS.
United States District Judge.
SAML. H. SIBLEY.
United States District Judge.

212 In United States District Court

[Title omitted.]

Petition for appeal by United States and Interstate Commerce Commission

Filed Mar. 1, 1930

United States of America, defendant, and Interstate Commerce Commission, intervening defendant, feeling themselves aggrieved by the final order or decree of the District Court entered January 18, 1930, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file to which reference is made.

They pray that a transcript of the record, proceedings, and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

[File indorsement omitted.]

213 In United States District Court

[Title omitted.]

Assignment of errors

Filed Mar. 1, 1930

United States of America, defendant, and Interstate Commerce Commission, intervening defendant, by their respective counsel, now come and in connection with their petition for appeal file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered January 18, 1930.

The District Court erred:

1. In setting aside, annulling, and suspending a report of the Interstate Commerce Commission dated October 9, 1929, in Finance Docket No. 5454, reorganization and control of Atlanta, Birming-

ham & Atlantic Railroad Company, 158 I. C. C. 6[illegible] and in
214 holding that said report is an order subject to review under the urgent Deficiencies appropriations act of October 22, 1913, 28 U. S. C. 41 (28).

2. In overruling and denying defendants' contention that the complaint be dismissed for lack of jurisdiction in the court to entertain a petition for the setting aside, separately from the commission's grant of authority to complainant to acquire control of the Atlanta, Birmingham & Atlantic Railroad Company, of the proviso prescribing, as a condition to the authority granted, parts of the terms and considerations upon and for which the commission authorized said control.

3. In granting and issuing a permanent injunction enjoining the enforcement, execution, and operation of a report and finding of the commission, dated October 9, 1929,

"That the amount to be included in the balance sheet of the New Company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87."

4. In holding and decreeing "that the equities are with complainant."

5. In holding and decreeing that the supplemental application of the complainant should stand for further hearing before the commission.

6. In holding that the value fixed by the commission in Valuation Docket No. 1, 75 I. C. C. 645, upon the property of the Atlanta, Birmingham & Atlantic Railroad Company, was material evidence in the determination of investment, and in confusing the "cost" to complainant of acquiring the property of the Atlanta,
215 Birmingham & Atlantic Railroad Company with the "value" so fixed by the commission.

7. In not dismissing the petition.

Wherefore, said defendant and intervening defendant pray that said order and decree of January 18, 1930, be set aside and that the order of the commission as aforesaid be given full force and effect.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

Service of the foregoing assignment of errors and the receipt of a copy thereof are hereby acknowledged this 28th day of July, 1930.

T. B. GRIER,
BRANDN HYNDS,
CARL H. DAVIS,
ROB. C. ALSTON,
Solicitors for Atlanta, Birmingham & Coast Railroad Company.

[File indorsement omitted.]

216 In United States District Court

[Title omitted.]

Order allowing appeal of United States and Interstate Commerce Commission

Filed Mar. 1. 1930

In the above-entitled cause, United States of America, defendant, and Interstate Commerce Commission, intervening defendant, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, entered January 18, 1930, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which the order or decree was made and entered to the Supreme Court of the United States.

217 SAML. H. SIBLEY,
United States District Judge.

Dated Feby. 27, 1930.

Service of the foregoing order allowing appeal and the receipt of a copy thereof are hereby acknowledged this 28th day of February, 1930.

F. B. GRIER,
BRANDON & HYNES,
CARL H. DAVIS,
ROBT. C. ALSTON,
Solicitors for Atlanta, Birmingham & Coast Railroad Company.

[File indorsement omitted.]

218 [Citation in usual form showing service on F. B. Grier et al., filed Mar. 8, 1930, omitted in printing.]

220 In United States District Court

[Title omitted.]

Notice of appeal

Filed Mar. 1, 1930

To Honorable GEORGE H. NAPIER,
Attorney General of the State of Georgia.

You are hereby notified that the defendants, United States of America and Interstate Commerce Commission, have taken an appeal

from the final order or decree of the District Court, entered January 18, 1930, to the Supreme Court of the United States, and that the order allowing the appeal makes the same returnable within thirty (30) days from the date thereof.

This notice is given to you pursuant to urgent deficiencies act, October 22, 1913 (38 Stat. 221).

221 JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

Service of the foregoing notice and the receipt of a copy thereof are hereby acknowledged this 1st day of March, 1930.

T. R. GRESS,
Assistant Attorney General, State of Georgia.

[File indorsement omitted.]

222 In United States District Court

Pracipe for transcript of record

Filed March 1, 1930

To the clerk:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of the United States of America, defendant, and Interstate Commerce Commission, intervening defendant, and include therein, in the order given below the following matter, viz:

1. Order as to subpœna, complaint in equity, and exhibits thereto attached.
2. Intervention and answer of the Interstate Commerce Commission.
3. Order extending time to file answer of the United States.
4. Answer of the United States.
5. Order assigning case for trial on October 12, 1928.
6. Petition to take testimony and order thereon.
7. Stipulation of February 7, 1930, including narrative statement of testimony, together with exhibits and other documents that
223 were submitted to the commission at the hearings mentioned in said stipulation and introduced in the District Court, and order approving the stipulation.
8. Testimony of E. L. Greene taken at Atlanta, Ga., October 11, 1928.
9. Opinion of the District Court.
10. Final decree dated October 26, 1928.

court in this case, at Atlanta, Ga., on October 12, 1928, and at New

11. Evidence and exhibits introduced at the hearings before the Orleans, La., on January 3, 1930, with the exception of narrative statement of the testimony introduced before the Interstate Commerce Commission, and the exhibits introduced therein, which have been adequately referred to and covered by the stipulation mentioned herein in paragraph 7. The exhibits so introduced and to be included at this point include:

12. Application filed with the commission on April 9, 1926, in F. D. 5454.

13. Supplemental application filed on November 26, 1926, in F. D. 5454 and exhibits thereto attached.

14. Return to questionnaire filed May 13, 1926, in F. D. 5454.

15. Supplemental application filed December 29, 1927, in F. D. 5454.

16. Petition of applicants filed June 1, 1926.

17. Reports, certificates and orders of I. C. C. dated October 26, 1926, and December 21, 1926. (The report of October 9, 1929, is an exhibit to the supplemental bill and as it will be there printed, need not be duplicated here.)

18. Statement filed March 22, 1928, by A. B. & Coast R. R. in F. D. 5454.

19. Transcript of oral argument at Washington, D. C., July 14, 1926.

20. Certificate of notification to I. C. C. dated January 10, 1927, and filed January 17, 1927, by B. L. Bugg.

21. Excerpts from commission's accounting classification, filed October 12, 1928, in the District Court.

224 22. Application filed April 16, 1926, in F. D. 5470.

23. Supplemental application filed December 8, 1926, in F. D. 5470.

24. Proposed report of Assistant Director Burnside, dated May 27, 1929, in F. D. 5454.

25. Exceptions by applicant to proposed report mentioned in No. 24.

26. Order of April 9, 1928.

27. All journal entries in their appropriate order.

28. Motion to file supplemental bill, supplemental bill and order thereon, with attached exhibits.

29. Answer of Interstate Commerce Commission to supplemental bill.

30. Answer of United States to supplemental bill.

31. Opinion of District Court on supplemental bill.

32. Final decree of January 18, 1930.

33. Petition for appeal.

34. Assignment of errors.

35. Order allowing appeal.

36. Citation.
37. Notice to Attorney General of State of Georgia.
38. Præcipe for record.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

[File indorsement omitted.]

225 Service of the foregoing præcipe for transcript of record and the receipt of a copy thereof are hereby admitted and acknowledged this 28 day of Feb'y, 1930.

F. B. GRIER,
CARL H. DAVIS,
BRANDON & HYNDS,
ROBERT C. ALSTON,
Solicitor for Atlanta, Birmingham & Coast Railroad Company.

226 [Clerk's certificate to foregoing transcript omitted in printing.]

227 Supreme Court of the United States

[Title omitted.]

Order extending time to file transcript of record

Filed Mar. 22, 1930

An appeal was granted in the above stated case by the District Court of the United States for the Northern District of Georgia, Atlanta Division, on February 27th, 1930, and citation issued under date of March 8th, 1930.

For good cause shown, it is hereby ordered that the time for filing the transcript of record in the Supreme Court of the United States be extended for a period of thirty days from March 28th, 1930.

This the 20th day of March, 1930. SAML. H. SIBLEY,
United States District Judge.

Presented by
C. P. GOREE,
Assistant United States Attorney.
[File indorsement omitted.]

228 Supreme Court of the United States

Statement of points on behalf of United States and Interstate Commerce Commission and designation of parts of record to be printed

Filed May 5, 1930

United States of America and Interstate Commerce Commission will rely on the following points in brief and in oral argument on

the hearing of the appeal for the reversal of the decree of the District Court.

1. The District Court erred in setting aside, annulling, and suspending a report of the Interstate Commerce Commission dated October 9, 1929, in Finance Docket No. 5454, Reorganization and Control of Atlanta, Birmingham & Atlantic Railroad Company, 158 I. C. C. 6.

2. The District Court erred in holding that said report is an order subject to review under the urgent deficiencies appropriations act of October 22, 1913, 28 U. S. C. 41 (28).

3. The District Court erred in disregarding the appellants'
229 contention that the complaint should be dismissed for lack of jurisdiction in the court to act upon a condition in the Commission's certificate authorizing the Atlantic Coast Line Railroad Company to acquire control of the Atlanta, Birmingham & Atlantic Railroad Company separately from the certificate of which the condition was and is a part.

4. The District Court erred in granting and issuing a permanent injunction enjoining the enforcement, execution, and operation of a report and finding of the commission, dated October 9, 1929, "that the amount to be included in the balance sheet of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87."

5. The District Court erred in holding and decreeing "that the equities are with complainant."

6. The District Court erred in holding and decreeing that the supplemental application of the appellee should stand for further hearing before the commission.

7. The District Court erred in holding that the value fixed by the commission in Valuation Docket No. 1, 75 I. C. C. 645, upon the property of the Atlanta, Birmingham & Atlantic Railroad Company, was material evidence in the determination of investment and in confusing the "cost" to appellee of acquiring the property of the Atlanta, Birmingham & Atlantic Railroad Company with the "value" so fixed by the commission.

8. The District Court erred in not dismissing the petition.

April, 1930.

230

THOMAS D. THACHER,
Solicitor General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Solicitor for Interstate Commerce Commission.

Receipt of copy of the above set out "Statement of points on behalf of the United States and Interstate Commerce Commission" acknowledged this 3 day of May, 1930.

CARL H. DAVIS,
J. A. HYNDS,
ROBERT C. ALSTON,
Solicitors for Atlanta, Birmingham & Coast Railroad Company.

231 *Designation by appellants of the parts of the record which shall be printed*

United States of America and Interstate Commerce Commission, by their respective counsel, hereby designate the entire record for printing as necessary for consideration for the determination of the points filed, except (a) such omissions as the clerk shall make pursuant to paragraph (9) of rule 13 and except so much and such parts thereof as are designated below which shall not be printed or otherwise reproduced by the clerk:

1. The oral argument dated July 14, 1926, before the Interstate Commerce Commission in Finance Docket No. 5454 may be omitted in printing with the exception of pages 185–186–187 thereof, which last-mentioned three pages should be printed.

232 2. Omit the map which is a portion of Exhibit 22 before the Interstate Commerce Commission.

3. Four maps (Exhibits 39, 40, 41, and 42) before the Interstate Commerce Commission need not be printed, but are to be sent up as original exhibits.

4. The order assigning case for trial on October 12, 1928, mentioned in paragraph No. 5 of the præcipe may be omitted.

5. The order of the Interstate Commerce Commission dated April 9, 1928, mentioned in paragraph No. 26 of the præcipe need not be printed, as it is already included as an exhibit to the bill of complaint.

April, 1930.

THOMAS D. THACHER,
Solicitor General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
EDWARD M. REIDY,
Solicitor for Interstate Commerce Commission.

3966—30——27

Receipt of copy of the above set out "Designation by appellants of the parts of the record which shall be printed" acknowledged this 3d day of May, 1930.

CARL H. DAVIS,
Z. A. HYNES,
ROBT. C. ALSTON,
Solicitors for Atlanta, Birmingham & Coast Railroad Company.

[File indorsement omitted.]

[Indorsement on cover:] File No. 34968. N. Georgia, D. C., U. S. Term No. 88. The United States of America and Interstate Commerce Commission, appellants, vs. Atlanta, Birmingham & Coast Railroad Company. Filed April 22, 1930. File No. 34968.

U. S. GOVERNMENT PRINTING OFFICE: 1930

FILED
MAY 3 1930
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

No. 88

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 837

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, appellants

v.

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellants submit herewith their statement showing the basis of this Court's jurisdiction in the above-entitled cause:

A

STATUTES

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938), paragraph (4) (U. S. C. Title 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 219, 220; U. S. C. Title 28, Sec. 47).

111263—30

B

DECREE

The final decree was entered January 18, 1930. (R. —.)

The petition for appeal was filed and the order allowing the appeal was entered March 1, 1930. (R. —.) Notices of appeal with service acknowledged were also filed March 1, 1930. (R. —.) The case was docketed in this Court on April 22, 1930.

C

RULINGS

The suit (R. —) was brought to enjoin the enforcement of a *report* of the Commission, which is, we contend, erroneously designated as an *order* (R. —) entered October 9, 1929, in the proceeding entitled Finance Docket No. 5454, *Reorganization and Control of the Atlanta, Birmingham & Atlantic Railroad Company*, 158 I. C. C. 6. The report, which was unaccompanied by any order, found that the amount to be included in the balance sheet statement of the appellee representing investment in road and equipment as of January 1, 1927, should not exceed $9,261,043.87, and that the carrier would be expected to adjust its accounts in accordance with the above finding within 60 days from the service of the report.

Circuit Judge Walker and District Judges Sibley and Dawkins, who sat in the specially constituted District Court, concurred in the full opinion

(*Atlanta, Birmingham & Coast Railroad Company* v. *United States and Interstate Commerce Commission*) (R. —) and signed the final decree which adjudged that the equities were with appellee and that the order of the Commission, in so far as it fixed the amount of return of capital stock and its investment in road and equipment, was void and should be set aside and that the supplemental application of the appellee should stand for further hearing before the Commission. (R. —.)

D

CASES

B. & O. R. R. v. *United States*, 277 U. S. 291.

United States v. *Berwind-White Coal Min. Co.*, 274 U. S. 564.

United States v. *N. Y. Cent. R. R.*, 272 U. S. 457.

Brimstone R. R. Co. v. *United States*, 276 U. S. 104.

Western Chem. Co. v. *United States*, 271 U. S. 268.

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Solicitor for Interstate Commerce Commission.

MAY —, 1930.

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No. 88

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MEMORANDUM IN RESPONSE TO APPELLEE'S "COUNTER-SHOWING AGAINST THE JURISDICTION OF THE COURT IN THIS CAUSE, WITH MOTION TO DISMISS BECAUSE OF THE WANT OF A SUBSTANTIAL FEDERAL QUESTION, AND MOTION TO AFFIRM"

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1. The sole ground upon which appellee attacks the jurisdiction of this Court to review the decree below is that "there is a lack of a substantial federal question."

In view of the statutes cited in the Statement of Jurisdiction (p. 2) and the rulings in the court below set forth both in the Statement of Jurisdiction (pp. 3–4) and the Statement of Points filed by

appellants (R. 509–510), we submit that the jurisdiction of this Court is indisputable.

The subject matter of the appeal is an alleged order of the Interstate Commerce Commission, which was assailed in the District Court by the appellee. There a decree was entered in favor of the appellee. The case was brought and the appeal is prosecuted under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219 (U. S. C., Title 28, § 41 (27 and 28); §§ 43 to 47), which provides in terms for a direct appeal to this Court from a final decree of the District Court enjoining, annulling, and restraining an order of the Commission. Appeal is not conditioned in such a case, as in cases from State courts brought here under Section 237, Judicial Code (U. S. C., Title 28, Sec. 344), upon the presence of a Federal question. The motion to dismiss should be denied.

2. Rule 7, Paragraph 4, of this Court provides that "the Court will receive a motion to affirm on the ground that * * * the questions on which the decision of the cause depends are so unsubstantial as not to need further argument." It is on this ground that appellee's motion to affirm is based. But the appellee refers to no prior decision of this Court which controls or settles the questions involved on the appeal. It states merely that the case has been twice decided by the court below favorably to appellee. This is clearly no reason for classifying the appeal as frivolous.

Examination of the Government's Assignments of Error (R. 504–505) and its Statement of Points (R. 509–510) will disclose, we submit, that the questions presented by the appellee require "analysis and exposition for decision," and consequently are not frivolous. *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710, 716.

In the instant case the Commission wrote a report which contained its findings and which concluded by stating that the Commission would expect the appellee to set up its accounts within the period of sixty days in accordance therewith, but the Commission entered no order. The Government contended below that until the Commission had entered a definite order so commanding the doing by appellee of certain specific acts as to put it under compulsion and possibility of the penalties prescribed by the Act for disobedience of an order, there was no ground upon which the court could take jurisdiction of the suit. *United States* v. *Los Angeles & Salt Lake Railroad Co.*, 273 U. S. 299, and authorities therein cited. But the court overruled this contention and held that the report as written constituted an order.

It is also contended by the Government that the decision below encroaches upon the administrative authority expressly granted the Commission under Section 20 of the Interstate Commerce Act, as interpreted by this Court in *Kansas City Southern Ry. Co.* v. *United States*, 231 U. S. 423, and results in substituting the court's judgment for the ad-

ministrative judgment of the Commission as to what the particular accounts prescribed by the Commission were intended by it to contain. In other words, the decision below substantially rewrites the rule prescribed by the Commission in its Account 41. (R. 435.) The purpose of this accounting rule clearly appears from the discussion of it by the Commission in its report. (R. 486.)

As in all cases involving the validity of orders of the Commission, the determination of the above questions depends largely upon a proper appreciation of the attendant facts. The case is one which should not be disposed of until the hearing on the merits. The motion to affirm should be denied.

Respectfully submitted.

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OPINIONS BELOW

The opinion of the specially constituted District Court upon the original bill and hearing (R. 220) is reported in 28 F. (2d) 885. The opinion of that court upon supplemental bill and hearing (R. 499) is reported in 37 F. (2d) 401.

The three reports of the Interstate Commerce Commission (R. 311, 320, 486) are reported in 117 I. C. C. 181, 117 I. C. C. 439, and 158 I. C. C. 6.

JURISDICTION

The final decree of the District Court was entered January 18, 1930. (R. 503.) Petition for appeal

was filed March 1, 1930, and allowed on the same day. (R. 504, 506.) The jurisdiction of this Court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C., Title 28, Sec. 47), and Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C. Title 28, Sec. 345).

QUESTIONS PRESENTED

The questions presented are:

(1) Whether a report of the Interstate Commerce Commission, dated October 9, 1929, constitutes an order subject to review under the Urgent Deficiencies Act of October 22, 1913.

(2) Whether the District Court had jurisdiction to emasculate a condition contained in an order of the Commission, dated December 21, 1926, where the effect would be to substitute its judgment for that of the Commission.

(3) Whether the value of a road acquired under a plan of reorganization is material to the determination of the accounting entries to be made by the acquiring carrier as its investment in such road within the meaning of the Commission's accounting rules and order of December 21, 1926, requiring such entries to be made at cost.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra* pp. 46–51.

STATEMENT

This appeal was taken from a decree of the District Court for the Northern District of Georgia setting aside a *report* of the Interstate Commerce Commission which fixed the maximum amounts at which the appellee might record in its balance sheet certain items credited to "Investment in Road and Equipment" and certain charges to "Capital Stock."

In January, 1927, appellee, under a Plan of Reorganization of February 23, 1926, acquired title to railroad properties previously owned by Atlanta, Birmingham & Atlantic Railway Company (hereinafter termed A., B. & A.). (R. 8.) A., B. & A. had become owner of the road in 1914 under a reorganization devised to remove it from a receivership under which it had operated since 1909. (R. 35.) At this time, 1914, a previous capitalization of $35,000,000 stock and $14,500,000 bonds was wiped out and A., B. & A. took the property subject to $4,090,000 first mortgage bonds of an old issue. (R. 177.) A., B. & A. then issued additional income bonds and stock. Beginning with 1918, A., B. & A. incurred yearly operating deficits which mounted until the road was again placed in receivership on February 25, 1921. (R. 177, 288.) No dividends were ever paid on A., B. & A.'s $30,000,000 par value common stock which was issued at $12 per share (producing $3,600,000), and subsequently sold below $1 per share. (R. 164.) Due to its lack

of traffic, the road could not be successfully operated as an independent property. (R. 178, 179.)

In 1921, separate bondholders' committees were organized for the first mortgage bonds and income bonds. Various proposals were considered by the committees, among them the possibility of scrapping the road. (R. 164, 165, 166.) Atlantic Coast Line Railroad (hereinafter termed Coast Line), finally became interested in the road and with the committees, on February 23, 1926, entered into a plan for the reorganization of the road. (R. 91.)

The Plan of Reorganization provided for the organization of a new company to acquire title after foreclosure of the railroad property. The authorized capital stock of the new company was to be $5,200,000 preferred stock, and 150,000 shares common stock without par value. The preferred stock was to have par value of $100 per share and to be entitled to 5% cumulative dividends and on liquidation to $100 plus accrued dividends. Coast Line, by separate agreement with the committees, was to guarantee to pay dividends upon and to redeem the preferred stock on liquidation. The preferred stock was to have no voting rights except on default in dividends. Holders of both classes of bonds of A., B. & A. were to be entitled to receive shares of the new company's preferred stock in the ratio of $60 par value of preferred stock for each $100 of bonds deposited under the Plan. (R. 91–94.) Approximately $8,600,000 of bonds of both issues were

outstanding. (R. 174.) Coast Line agreed with the committees to furnish cash (estimated to be $3,677,500, R. 90) to retire the prior obligations, consisting chiefly of receivership debts. (R. 83, 90). No provision was made under the Plan for the stockholders of A., B. & A. Coast Line was to be entitled to the entire issue of 150,000 shares of common stock, without par value, in return for cash which it was to provide to pay debts having priority over the bonds.

On April 8, 1926, the reorganization committee, pursuant to Sections 1 (18) and 20 (a) (2) of the Interstate Commerce Act, filed an application, on behalf of the proposed new company, for a certificate of public convenience and necessity and for authority to issue the preferred and common stock. (R. 223.) On April 12, 1926, Coast Line filed an application under Section 5 (2) of the Interstate Commerce Act for authority to acquire control by the purchase of all of the common stock of the new company, and under Section 20 (a) for authority to assume guarantees with respect to its preferred stock. (R. 448.)

On April 30, 1926, the United States District Court for the Northern District of Georgia entered a decree of foreclosure and sale of the property of A. B. & A. (R. 31.) The upset price fixed by the court was $2,500,000. (R. 55.) On June 22, 1926, pursuant to the decree, the property was sold, subject to certain charges (to be assumed by Coast Line under the Plan), to the reorganization com-

mittee for $4,500,000. (R. 135, 137.) The bid was conditioned on the approval by the Interstate Commerce Commission of the Plan. (R. 138.) This sale was confirmed by the court on June 23, 1926. (R. 140.)

On May 20, 1926, the Commission held hearings on the applications of the reorganization committee. (R. 162–203.) A witness for the Plan explained that it contemplated the sale of the common stock of the new company to Coast Line for the cash required to lift the receivership. (R. 169, 170.)

On October 26, 1926, the Commission rendered a report and order granting a certificate of public convenience and necessity to the reorganization committee, and deferred action upon its application to issue stock and upon Coast Line's application to acquire control and to assume guarantees until the new company should be organized. (R. 312, 319.) In its report, the Commission stated (R. 317):

> The statement of the investment accounts of the new company has not received consideration by the applicants, but they indicate their willingness to submit to such reasonable restriction as we may prescribe.

On November 16, 1926, the District Court ordered that a deed to the properties be delivered to the reorganization committee, and the appellee, Atlanta, Birmingham & Coast Railroad Company, was granted a charter under the laws of the State of

Georgia. (R. 6.) The appellee, on November 25, 1926, filed with the Commission an application for a certificate of public convenience and necessity and for authority to issue stocks, adopting as its own the application previously filed by the reorganization committee. (R. 229.)

On December 21, 1926, the Commission rendered a report and order granting to appellee authority to issue (a) $5,180,344.07 preferred stock, par value $100 per share, and (b) 150,000 shares of common stock without par value. (R. 320, 324.) It also authorized Coast Line to acquire control of appellee by purchase of its common stock and to assume obligations as guarantor of appellee's preferred stock. The material portion of the Commission's order relating to appellee's accounts is as follows (R. 324):

> It is ordered that the Atlanta, Birmingham & Coast Railroad Company be, and it is hereby, authorized to issue not exceeding $5,180,344.07 of its preferred capital stock and not exceeding 150,000 shares of its common capital stock without nominal or par value; said preferred and common stock to be used for the purposes specified in the application recorded under Finance Docket No. 5454 and in the report aforesaid: Provided, however, that authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text

> of account 41, "Cost of road purchased," the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.

The Commission's applicable accounting rules,[1] promulgated pursuant to Section 20 (5) of the Interstate Commerce Act, are contained in its "Classification of Investment in Road and Equipment of Steam Roads." (R. 407.) The appropriate instructions are:

> 1. *Accounts for Investment in Road and Equipment.*—The accounts prescribed in this classification are designed to show the investment of the carrier in property devoted to transportation service. * * * *The carrier* means the accounting carrier,

---

[1] The Commission's Classification of Income, Profit and Loss, and General Balance Sheet Accounts (R. 339) contains the following rules regarding balance sheet entries:

701. *Investment in Road and Equipment* (R. 381).—This account shall include the accounting company's investment in road and equipment (including that held under contract for purchase) in existence at the date of the balance sheet.

751. *Capital Stock* (R. 388, as amended, R. 403).—This account shall include the total value as herein provided of certificates or receipts issued to represent permanent interests in the accounting company * * *.

When such certificates or receipts have no par value they shall be included in this account at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash. * * *

except when otherwise specifically indicated. (R. 415.)

* * * * *

3. *Basis of Charges.*—The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification is other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it. The carrier shall be prepared to furnish the Commission, upon demand, the particulars of its determination of the actual cash value of the consideration, if other than money. (R. 416.)

The Classification of primary accounts prescribes the following rule (R. 435):

41. *Cost of Road Purchased.*—This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. *Where the consideration given for the property purchased is other than cash,*

such consideration shall be valued on a current cash basis. * * * (R. 435.) Italics ours.)

Following the entry of the Commission's order of December 21, 1926, appellee acquired title to the A., B. & A. properties from the reorganization committee and issued $5,180,344.07 of its preferred stock to the reorganization committee for distribution to the A., B. & A. bondholders in accordance with the Plan of Reorganization. (R. 8.) On the direction of the committee, it issued its 150,000 shares of no-par common stock to Coast Line after Coast Line had paid or provided for payment of the charges prior to the A., B. & A. bonds. (R. 8.) The charges paid or assumed by Coast Line totaled $4,080,699.80, which was slightly in excess of the amount estimated to be needed at the date of the Reorganization Agreement. (R. 90.) Pursuant to Section 20a (5) appellee filed with the Commission a certificate of notification of securities sold, in which the 150,000 shares of common stock, without par value, were stated to have been sold to Coast Line at a tentative value of $4,080,699.80.

Appellee in its opening balance sheet set up as "Investment in road and equipment" the amount of $29,471,859. (R. 17.) This credit entry was prepared on the assumption that appellee was entitled to perpetuate in its accounts the sum of money fixed by the Commission, as of 1914, as the amount on which A., B. & A. was entitled to earn

a fair return. (75 I. C. C. 645.) The Commission's Bureau of Accounts by letter of August 3, 1927 (R. 300), notified appellee that the above entry was not acceptable because based upon valuation (reproduction cost new) instead of cost. It advised the appellee that it would be necessary to consider $4,080,699.80 as the cash value of the 150,000 shares of no-par stock and directed appellee to reduce the proposed entry of $29,471,859 to this amount. In its certificate of notification to the Commission dated January 10, 1927, appellee had assigned $4,080,699.80 as the tentative value of the no-par common stock. (R. 337.)

On November 3, 1927, appellee filed an application with the Commission requesting a hearing in support of its contention that the proviso in the December 21, 1926, order authorized the accounting entries which had been submitted to the Bureau of Accounts. (R. 10, 289.) On April 9, 1928, the Commission acted upon this application as follows (R. 10):

> The Commission having under consideration the petition filed in the above entitled proceeding by the Atlanta, Birmingham & Coast Railway Company requesting oral argument on said petition, wherein it seeks a supplemental order authorizing it to set up in its books of accounts as the value of the property acquired by it at foreclosure sale of the Atlanta, Birmingham & Atlantic Railway Company entries charging its ac-

counts with the final valuation of the properties acquired, as fixed by us in Valuation Docket No. 1:

It is ordered that said petition be, and it is hereby denied.

On June 14, 1928, appellee filed its original petition in equity asking that this April 9, 1928 order of the Commission be set aside and that an order be issued authorizing it to set up its books in accordance with the 1914 valuation. (R. 1–16, 18.) On November 2, 1928, the specially constituted District Court decreed that the April 9, 1928, order be set aside and that the matters stand for further hearing before the Commission. (R. 222.) The court held in effect that the Commission should have allowed a hearing on the construction to be given the December 21, 1926, proviso. (R. 500.) On February 4, 1929, the Commission held a hearing at which appellee submitted a general balance sheet as of January 1, 1927, based on the Commission's valuation of A., B. & A. plus additions and betterments to date, setting forth its investment in road and equipment at $24,481,893.86. (R. 161, 488.)

On October 9, 1929, the Commission rendered a *report* which considered the proposed accounting entries, the Commission's accounting rules, and the December 21, 1926, proviso, and concluded (R. 486, 494):

Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the balance sheet

> statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. The company will be expected to adjust its accounts in accordance with this finding within 60 days from service of this report.

The above sum, $9,261,043.87, is the total of two items—the issue of preferred stock, $5,180,344.07, and $4,080,699.80, the sum paid by the Coast Line to discharge the debts having liens prior to the bonds.

On November 20, 1929, appellee filed its supplemental bill. (R. 480.) The United States moved to dismiss the bill on the ground that the Commission had not issued an order giving jurisdiction to the District Court under the Urgent Deficiencies Act of October 22, 1913; and the United States and the Commission also answered on the merits. (R. 498, 495.) On January 18, 1930, the District Court entered a decree enjoining the enforcement of the Commission's "order" of October 9, 1929,[2] and ordered the supplemental application of appellee to stand for further hearing before the Commission. (R. 503.) From that decree this appeal is taken.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

(1) In holding that the report was an order subject to review under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C., Title 28, Sec. 47).

[2] The court in its decree incorrectly referred to the order as dated October 29, 1929.

(2) In setting aside, annulling, and suspending the report of the Commission.

(3) In disregarding appellant's contention that the complaint should be dismissed for lack of jurisdiction in the court to act upon a condition in the Commission's certificate of December 21, 1926, separately from the certificate of which it was a part.

(4) In granting a permanent injunction restraining the enforcement, execution, and operation of the finding and report of the Commission "that the amount to be included in the balance sheet of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87."

(5) In decreeing that the supplemental application of appellee stand for further hearing.

(6) In holding that the value fixed by the Commission on the property of Atlanta, Birmingham & Atlantic (75 I. C. C. 645), was material evidence of investment and in confusing cost to appellee of acquiring the property with such value.

(7) In not dismissing the petition.

SUMMARY OF ARGUMENT

I. The present suit was premature since the Commission on October 9, 1929, entered no order requiring appellee to correct its accounting entries so as to conform with the Commission's findings and report. None of the reasons assigned by the lower court substantiate its conclusion that the report

was in fact an order. Similar reports stating that the Commission would "expect" the carrier to conform its action to the report have been held not to be orders. Final orders of the Commission have essential formal characteristics analogous to final judgments of the courts. Such characteristics are wholly lacking in this report. If it is said that this report derives its character as an order from the December 21, 1926, order of the Commission, then this suit is tardy since appellee's recourse was against that order.

Nor is there any basis for action under the general equity powers of the court. The Commission has made no attempt to use the figure here determined by it to be the cost to appellee of acquiring the road for the purpose of fixing rates, or of determining depreciation or recapturable income. And, the further contention that appellee would be subject to penalties under Section 20 (6) of the Interstate Commerce Act if it did not comply with the report, assumes that an order was, in fact, entered. Even if true, the penalties were imposed by the statute and not by the Commission's report.

II. Even if the Commission's report were construed as an order, it would seem that the court would not have jurisdiction to set the order aside where the effect would be to substitute its judgment for that of the Commission in determining what was meant by the Commission's order of December 21, 1926. The 1926 order contained a proviso

that the common stock issued by appellee should be valued for accounting purposes at "not in excess of the amount received therefor." The record indicates that appellee knew at the time of the insertion of this condition that its authority to issue stock was conditioned upon the entry of its common stock in its accounts at an amount not to exceed Coast Line's payments to creditors of the old road—which payments were required of Coast Line by the Plan of Reorganization as a condition to obtaining appellee's entire common-stock issue. It would seem obligatory upon appellee, if it considered such a condition to be unlawful, to have contested the 1926 order. If, in such contest, a court had found that the Commission could not attach such a condition to its authorization, the Commission upon further consideration of the Plan would have been in a position to determine whether the Plan was a proper one in view of the fact that the Commission could not eliminate the overcapitalization existing in the road's financial situation.

The lower court gave no intimation that a specific provision by the Commission that the common stock be valued at the amount Coast Line paid would have been unlawful, and it is believed that the Commission would have had authority under the Interstate Commerce Act to make such a condition. The sole question which the court considered appears to have been one of interpretation

of the Commission's intent. That would seem eminently an administrative question for the Commission to decide. The effect of the decision, then, is to rest appellee's authorization to issue stock on the judgment of the court rather than that of the Commission.

III. Appellee contends that this Court can not consider the correctness of the decision because no appeal was taken from the court's first decision. The view taken by the District Court answers this contention for its first decision was rested upon the failure of the Commission to grant a hearing, at appellee's request, upon the construction of the Commission's 1926 order.

The ruling of the court below that the cost to appellee of acquiring the road was the value of the road acquired resulted from an erroneous interpretation of the Commission's accounting rules and 1926 order as applied to the valuation of appellee's common stock. That valuation is necessarily reflected in the appellee's asset statement of "Investment in Road and Equipment." The purpose of this entry is to record the historical fact of the amount invested by a carrier in acquiring a road.

The cash value of the preferred stock issued under the Plan of Reorganization was determined by the lower court to be its par value. No objection to that valuation is raised by the parties to this appeal. The accounting rules and 1926 order of the Commission required the common stock issued

by appellee to be valued on a current cash basis. By virtue of the fact that such common stock was without par value, the lower court determined that its cash value should be arrived at by finding the present market value of the road and deducting therefrom the par value of the preferred stock—and this notwithstanding the fact that the road was acquired by virtue of the issuance of both classes of stock. The decision seems to turn on the incident that no par value or issue price was ascribed to the common stock.

Even on the court's theory that the value of the common stock was to be measured by the value of the road, there is ample evidence in the record that no disparity existed between the amount found by the Commission to be appellee's investment, or $9,261,043.83, and the present market value of the road. The court erred in holding that Section 19a (i) required that the Commission in 1926 accept its valuation of the road, as of 1914, as evidence of the market value of the road.

The failure of the Commission to attach any value to Coast Line's guaranty of appellee's preferred stock was not the basis of the lower court's decision. The reasons assigned by the Commission are sufficient to support its finding on that question.

The assertion that the figure determined by the Commission to be appellee's investment in the road will be prejudicial to appellee in future valuation proceedings, in fixing rates, and in determining

recapturable income and depreciation, is largely fanciful and lends no support to the court's decision.

ARGUMENT

I

THE COURT HAD NO JURISDICTION TO SET ASIDE A REPORT OF THE COMMISSION UNACCOMPANIED BY AN ORDER

Appellee's resort to the court to set aside the action taken by the Commission on October 9, 1929, was premature since the Commission entered no order requiring appellee to correct its accounts to conform with the findings of the Commission. The Commerce Court Act (c. 309, 36 Stat. 539) conferred upon the Commerce Court jurisdiction over "cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." The Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, transferred the jurisdiction of the Commerce Court to the several District Courts of the United States.

The portions of the report cited by appellee to support its contention that the report was in reality an order are its heading and its concluding paragraph, which are as follows: (R. 486, 494):

> Upon further hearing, application of Commission's accounting regulations to statement of the investment accounts of the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927, considered and *accounting prescribed.* * * *.

> Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. *The company will be expected to adjust its accounts in accordance with this finding within 60 days from service of this report.* (Italics ours.)

The lower court in upholding jurisdiction reasoned that though no formal order was entered the report was intended as such because otherwise the sixty-day clause would be meaningless; that it requested the Commission to postpone the effective date of the report which the Commission did without disclaiming its action as final, and that appellee attacked the report as constituting an order.

It is submitted that the reasons assigned furnished no basis for jurisdiction. To hold that appellee's attack on the Commission's action was ground for its classification as an order is to assume the question in issue. Nor can any weight be attached to the language of the headnote cited by appellee. That is less significant than the fact that the action of the Commission is not reported under the usual headings of "Report" and "Order." Further, it is the statute and not the failure of the Commission to disclaim finality of its action which furnishes the measure of the court's jurisdiction. The sixty-day clause could

not be meaningless as the court states unless ascribed to the Commission's intention to have its action followed by no formal order. Its context fairly implies that the Commission would grant to appellee sixty days within which it voluntarily might conform its accounts to the Commission's finding before the Commission would proceed to enforce its finding by formal order.

The mode of procedure here adopted by the Commission is not foreign to its practice. Carriers are frequently permitted to conform their practices voluntarily to the findings of the Commission without being subject to the penalties attendant upon the issuance of a formal order. In *United States* v. *New River Co.*, 265 U. S. 533, precisely that procedure was adopted. There a rule for car distribution was attacked before a Division of the Commission as being preferential of local mines and prejudicial to joint mines. The Division in its report found the existing rule unreasonable and concluded (p. 537):

> We have not required that car service rules be filed as tariff schedules. We will not in this proceeding direct that the rules which we herein find to be reasonable be so filed. We shall expect, however, that defendants will promptly amend their car service rules so as to conform with our findings and evidence same by filing copies thereof with us.

This Court said (p. 537):

> No formal order was entered, but the carriers amended their rules to conform to the findings in the report, and put in force and applied the 150 per cent rule.

While the question then presented arose out of a subsequent formal order of the full Commission dismissing the proceedings, and while the Court did not pass on the reviewability of the report, it differentiated between a formal order and a report precisely similar to that involved in this suit.

Reports of the Commission concluding that the carriers would be "expected" to conform their tariffs in accordance with the Commission's findings were held not to be orders in *American Sugar Refining Co.* v. *Delaware, L. & W. RR. Co.*, 207 Fed. 733 (C. C. A. 3d), and *Chicago, B. & Q. R. Co.* v. *Merriam & Millard Co.*, 297 Fed. 1 (C. C. A. 8th), certiorari denied, 265 U. S. 592. The force of these decisions is not destroyed by the fact that in suits for reparations by a shipper, he must point to a formal cease and desist order of the Commission declaring the existing tariff unduly preferential and compelling the publication of new rates. There is nothing in Section 20 of the Interstate Commerce Act to suggest that the action there taken by the Commission in prescribing the form of accounts can be made obligatory by any less formal procedure than the entry of an order. In *Kansas City Southern Railway* v. *United States*,

231 U. S. 423, the attack on the Commission's accounting requirements was directed against the regulations themselves, adopted by formal order of the Commission.

We submit that a report of the Commission is analogous to the opinion of a court. Until a judgment is entered by a court its decision can not be reviewed, and until an order is entered by the Commission the District Court has no jurisdiction under the Urgent Deficiencies Act. See *Brady* v. *Interstate Commerce Commission,* 43 F. (2d) 847, 850 (N. D. W. Va.). And in each case the distinction is found in the formal cast and mandatory language of the final action.

Appellee seeks to impart finality to this report of October 9, 1929, by an assertion that it must be read together with the order of December 21, 1926, which directed the common stock "to be reckoned on a basis not in excess of the amount received therefor." In appellee's motion before this Court to dismiss the appeal it is stated that "the present proceeding is as though that original order had been put back into force." If the 1926 order was deprived of its authority by the Court's first decree and was restored only by the Commission's interpretation in its report, then appellee is forced to take the position that the 1926 order originally prescribed that the stock be set up at an amount not in excess of $9,261,043. Yet appellee's first bill attacked only an order of April 9, 1928, which

denied it a hearing on its interpretation of what the 1926 order meant; and its theory of the bill (R. 11) and the court's first decision proceeded on the theory that the 1926 order was valid but had been erroneously construed by the Commission's accountants. But, even on the latter theory, it follows that if the report derives its character as an order from the 1926 order for enforcement purposes, it, in turn, supplies to that order its interpretative provision, namely, that the stock be set up at the $9,261,043 figure. Appellee is accordingly placed in this dilemma: if the order and report be viewed as one, then this suit is tardy since appellee's attack lay against the order authorizing it to issue stock and operate the road; or, if the report of October 9, 1929, stands on its own feet as being an erroneous interpretation of a valid order, then this suit is premature since no order has been entered which requires appellee to accept the Commission's interpretation.

No basis for the relief granted by the court below was furnished by its general equity powers. It was alleged that the Commission's findings as to the amount of appellee's investment in road and equipment would be admissible evidence in proceedings to fix rates and in computation of recapturable earnings under Section 15(a), and in ascertainment of depreciation. These contentions will be dealt with on the merits, but it is sufficient answer for this purpose that the Commission has

not attempted to so use that amount in this proceeding. The contention is disposed of by this Court's decision in *United States* v. *Los Angeles & Salt Lake Railroad Company*, 273 U. S. 299. There the Court held that a final valuation order of the Commission, entered pursuant to Section 19a, was not reviewable by the courts. The Court said in dealing with a similar contention (pp. 314–315):

> No basis is laid for relief under the general equity powers. The investigation was undertaken in aid of the legislative purpose of regulation. In conducting the investigation, and in making the report, the Commission performed a service specifically delegated and prescribed by Congress. Its conclusions, if erroneous in law, may be disregarded. But neither its utterances, nor its processes of reasoning, as distinguished from its acts, are a subject for injunction.

It is finally contended that the failure of appellee to keep its accounts in the manner specified in the Commission's report will subject it to penalties under Section 20 (6) of the Interstate Commerce Act. This contention assumes that the Commission has ordered and not invited compliance with the report. And, further, it fails to provide a basis for the lower court's jurisdiction since the penalties are imposed not by virtue of the Commission's action but by virtue of the statute. *Lehigh Valley Railroad Co.* v. *United States*, 243 U. S. 413, 414.

II

THE COURTS HAVE NO JURISDICTION TO REWRITE AN ORDER OF THE COMMISSION AFTER THE AUTHORITY GRANTED BY THE ORDER HAS BEEN EXERCISED

Even if the report of the Commission were construed as an order, it would not be the kind of order that is judicially reviewable under the Urgent Deficiencies Act of October 22, 1913.

The report considered the interpretations which appellee and the lower court desired to place on the Commission's language in the December 21, 1926, order and stated that the amount intended by it to be shown on appellee's books under "Investment in Road and Equipment" was one not in excess of $9,261,043.87. Appellee, after acting under the authorization by issuing stock and acquiring the road, seeks to nullify the effect of that condition by this suit, and the lower court, by determining that the amount required to be set up was the present market value of the road, emasculated the condition attached by the Commission to its authorization.

Appellee must be charged with the knowledge of the purpose of this condition. The Commission's report on the application of the committee for a certificate of public convenience and necessity, recited that the applicants had indicated their willingness to submit to such reasonable restriction in the statements of their accounts as the Commission might prescribe. (R. 317.) That restriction

was contained in the 1926 order, namely, that the preferred stock be stated at par and the common at "not in excess of the amount received therefor." Subsequently, appellee in notifying the Commission of its issuance of stock, placed on the common stock the value of $4,080,699.80. (R. 337.) That value, which is here contested, must have been specified because of appellee's understanding that the Commission's order so required. The proviso is not ambiguous. It stated that the common stock should be stated at not in excess of the *amount* received therefor. The only amount involved in the Plan of Reorganization was the amount Coast Line should pay in order that it might secure the common stock. Further, if the condition be construed to mean the value of the road acquired, then it would impose no real limitation on the authority to issue stock. But the insertion of the proviso seems to make it certain. It follows, therefore, that appellee should have contested the order by which it was authorized to issue the stock. Such an order, though permissive in character, is subject to attack under the decisions of this Court. *Chicago Junction Case,* 264 U. S. 258, 263; *Venner Company* v. *Michigan Central Railroad,* 271 U. S. 127, 131.

We do not understand the lower court's decision to hold, nor do we concede that it would have been unlawful for the Commission to have specifically provided in this case that appellee's investment in road and equipment should be stated at $9,261,043.87.

Under Section 20a (3) of the Interstate Commerce Act, the Commission is empowered to grant applications or permission to issue stock upon such terms and conditions as it "may deem necessary or appropriate in the premises." No restriction could be more pertinent to such a grant of authority than a provision as to the amount at which the stock should be set up on the books of the carrier. Power to insert such a condition is also found in the sections of the Act dealing with accounting entries. Section 20(1) of the Act empowers the Commission to require annual reports from carriers showing, *inter alia,* the "cost and value" of the carrier's property. It provides further that the Commission shall have power to require the keeping of uniform accounts by all carriers. Subparagraph (5) of that Section provides that the Commission in its discretion may prescribe the forms of "any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act." In *Kansas City Southern Railway* v. *United States,* 231 U. S. 423, the Court held that accounting classifications of the Commission relating to entries for construction made off the carrier's line and resulting in abandonment of a part of its property were not so in variance with the fundamental principles of accounting as to manifest an abuse of power, even though the complaining carrier was thereby allowed to enter in its capital accounts only $200,000 of an outlay of approximately $600,000 in improvements off its line. *A fortiori,*

the present requirement is not unlawful in prescribing that appellee shall state the cost to it of acquiring the road rather than the value of the property acquired.

If the present question, then, be one of interpretation of an order, it seems manifest that the Commission rather than the court is charged with its interpretation. But the lower Court in its decision has in effect informed the Commission what it is entitled to have shown on appellee's books and has denied the Commission's power to determine what the accounts prescribed by it should contain. In *Kansas City Southern Railway,* v. *United States,* 231 U. S. 423, *supra,* in rejecting a contention that Section 20 unconstitutionally delegated legislative power to the Commission, the Court said (pp. 443, 456):

> And since, as just shown, uniformity in accounting is dependent upon the adoption and enforcement of precise classification, the authority to define the terms of the classification necessarily follows. It amounts, after all, to no more than laying down the general rules of action under which the Commission shall proceed, and leaving it to the Commission to apply those rules to particular situations and circumstances by the establishment and enforcement of administrative regulations.
>
> * * * * *
>
> But, did we agree with appellant that the abandonments ought to be charged to surplus or to profit and loss, rather than to op-

> erating expenses, we still should not deem this a sufficient ground to declare that the Commission had abused its power. So long as it acts fairly and reasonably within the grant of power constitutionally conferred by Congress, its orders are not open to judicial review.

We submit that the interpretation of its order was a proper administrative function of the Commission. One of the chief administrative reasons which must have influenced the Commission in approving the Plan of Reorganization was that this Plan afforded an opportunity to eliminate watered values and over-capitalization in the road's financial structure. The effect of the lower court's rewriting the condition of the Commission's order (and in so doing thereby passing on a wholly different administrative question than that before the Commission), is to rest appellee's authorization to issue stock and acquire control of the road upon the judgment of the court and not the administrative findings of the Commission. See *Procter & Gamble* v. *United States*, 225 U. S. 282; *Hooker* v. *Knapp*, 225 U. S. 302.

III

THE REPORT OF THE COMMISSION WAS A CORRECT AND LAWFUL INTERPRETATION OF THE PRIOR ORDER

Appellee alleged in its bill that the report of the Commission was unlawful since it departed from the law of the case fixed by the court's first decision; that is, that the merits can not be considered by this Court since no appeal was taken from the

first decision of the District Court. (R. 484.) The sole question before the court on the first hearing was whether the Commission should have allowed appellee a hearing in support of its interpretation of the condition and accounting rules. The view taken by the court itself answers this contention. In the present suit it considered the merits of the case *de novo*, and stated regarding the first suit (R. 500):

> At that time an order of the Interstate Commerce Commission [April 9, 1928], made upon a supplemental application of the Coast Company for interpretation of a former order, dated December 21st, 1926, touching the accounts of the company, was set aside because granted without a hearing.

The only question which could have been raised before this Court would have been one of an administrative nature, that is, whether a hearing should have been allowed. The decisions cited by appellee lend no support to its contention. In *Lucas* v. *Alexander*, 279 U. S. 573, and *Federal Trade Commission* v. *Pacific Paper Ass'n*, 273 U. S. 52, this Court held that a respondent in *certiorari* could not obtain a review by the Court of questions not raised by petitioner's application for review and upon which respondent had not filed petition for review.

The decision below did not hold that the Commission is without authority to prescribe that property acquired by a carrier shall be entered

upon its books at cost. The fallacy of the decision would be more apparent had the court stated, as it indirectly held, that the cost to a carrier of acquiring a road is the value of the road acquired. The court reached that erroneous result by misinterpretation of the Commission's rules and its order applicable to appellee's capital stock entries which, *per contra,* are reflected in the asset statement under "Investment in Road and Equipment."

The applicable phrases of the Commission's accounting rules are as follows (*supra,* pp. 9–10):

> The charges to the accounts of this classification [Investment in Road and Equipment] shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property, the cost of which is chargeable to the accounts of this classification is other than money the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it.
>
> * * * * *
>
> Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis. (Primary Account 41.)
>
> * * * * *
>
> *Capital Stock.*—When such certificates or receipts (of the accounting company) have

> no par value they shall be included in this account at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash. * * *

The proviso of the Commission's order of December 21, 1926 states:

> * * * the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.

At the first hearing before the District Court, appellee contended that under these provisions the amount to be set up under "Investment in Road and Equipment" was the Commission's rate valuation of AB&A property as of 1914 (75 I. C. C. 645), brought to date. The lower court, although basing its decision upon the denial of hearing, stated that the proper entry was the present market value of the road. This ruling would evidently require the Commission separately to appraise each item of the carrier's equipment as to marketability. Appellee, after the first decision, introduced before the Commission a revised balance sheet based on the Commission's old valuation. (R. 207, 161.) The Commission's statement that this was not "pertinent or material evidence" led the lower court to set aside the report, although it adopted its previous view as to the proper entries to be made.

The purpose of the Commission's accounting rule No. 41 (*supra*, p. 9) is to record the historical fact of the amount invested by the carrier in an acquired road, and the lower court so found. (R.

502.) The court said, however, that a necessary exception was found where the purchasing company does not pay cash but issues stock, and that here the cash value of appellee's stock was to be measured by the value of the road acquired under the reorganization. If appellee had paid $9,261,043.87 for the road, the lower court admittedly would have found that the proper entry was that figure, and, *per contra,* not the value of the road.

In determining the cash value of the preferred stock the court and appellee are willing to ascribe to it its par value, $5,180,344. The mere fortuity, therefore, that the common stock issued was without par value, or issue price, gives rise to the assertion that its money value is the value of the road less the par value of the preferred stock—and this despite the fact that the road was acquired by virtue of a Plan calling for the issue of both classes of stock.

The Plan of Reorganization contemplated the vesting of title in appellee of an *unencumbered* road. The vesting of title was but an incident of the Plan; its substance lay in the retirement of the debts of the old company. Pursuant to the Plan, the preferred stock was issued to the bondholders of AB&A, and, to insure their acceptance of unsecured obligations, this stock was guaranteed by Coast Line. There were debts having priority over the bonds. These Coast Line agreed to discharge in consideration for the issuance to it of

150,000 shares of common stock. These prior charges were not indeterminate. A schedule was attached to Coast Line's agreement defining the scope of its undertaking with an expansive provision to include, if necessary, principal and interest on refunding bonds held as collateral for such charges. (R. 90, 84.) The amount paid or assumed by Coast Line came to $4,080,699.80.

Deferring the question as to the propriety of valuing the guaranty (see pp. 40–43, *infra*) the Commission properly ascribed $4,080,699.80 as the cash value of the 150,000 shares of common stock without par value. While appellee did not receive this amount directly, the Commission correctly viewed the transaction as amounting to that. Had appellee issued its common stock directly to Coast Line and received this sum necessary to retire the prior charges, it is clear from the view of the court below that such payment would have fixed the value of the common stock. It is difficult to see why the payment of $4,080,699.80 to appellee's nominees, the creditors of AB&A (for that was the effect of the Plan), would not equally fix the cash value of the common stock at that figure. The parties to the Plan of Reorganization themselves regarded the transaction involving the issuance of appellee's common stock as amounting, in substance, to a cash transaction. The Plan stated (R. 94):

> The Railroad Company [Coast Line] shall be entitled to the entire issue of 150,000 shares

> without par value of common stock of the New Company in exchange for the cash which the Railroad Company shall provide.

A witness supporting the Plan before the Commission stated that the common stock was to be sold to Coast Line for approximately $3,500,000, the amount necessary to lift the receivership. (R. 168, 169, 174.) In its certificate of notification to the Commission of securities sold, pursuant to Section 20a of the Interstate Commerce Act, appellee stated that on January 4, 1927, it had sold its 150,000 shares of common stock to Coast Line, and assigned as its tentative value, $4,080,699.80, the amount paid by Coast Line to AB&A creditors. (R. 337.)

Apparently the court below was impressed by the fact that appellee received nothing under the Plan but a deed to the railroad property. It failed to consider the purpose and effect of the Plan, which was to discharge the debts of the old company in order that the new company should have the property free from liens. The District Court was insistent that the valuation of the common stock urged by the Commission involved a confusion of the identities of appellee and Coast Line; a failure to distinguish Coast Line's expenditure and appellee's investment. There is no occasion to confuse the identities of the corporations. It is conceded that in the ordinary case the stockholders' investment in stock and the company's investment in road have no necessary relation, but this is not

such a case. Here, as a part of one single transaction, Coast Line credited on its books $4,080,697.80, which it had paid out in order to acquire appellee's stock, and yet appellee would charge itself with a liability on the same stock of over $19,000,000. The court, on the other hand, would fix the charge at the present market value of the road less the preferred stock, merely for the reason that Coast Line did not pay that sum over to it but rather retired a debt which would otherwise have encumbered the property. This view as to the relation of the investment of Coast Line with that of appellee was taken by the chairman of the bondholder's committee, who testified that the investment of the new company under the Plan was represented by the par value of the preferred stock, plus the cash to be supplied by Coast Line. (R. 175.)

The appellants do not admit that the proper approach to this problem is through valuation of appellee's road. Yet even on the view taken by the lower court there was ample evidence to sustain the Commission's finding on that basis. The entire record of the proceedings before the Commission is available in determining the correctness of the Commission's report of October 9, 1929, and that record conclusively establishes that there was no disparity between the market value of the road and the amount determined by the Commission as representing appellee's investment.

At the hearing on February 4, 1929, the only evidence of value offered by appellee was an exhibit prepared from the Commission's prior valuation of the road, showing "Investment in Road and Equipment" of $24,481,893. (R. 161.) The Commission considered this valuation and stated that it was not "pertinent or material evidence in the determination of appellee's investment." The Commission determined that as between the appellee's figure and $9,261,043, even on the lower court's theory, the latter was the only fair index of the worth of the road. The road was operating with yearly deficits, there was no prospect of successful operation as an independent carrier due to its lack of traffic, and the bondholders had even considered scrapping the road (*supra*, pp. 3–4).

The chairman of one of the bondholder's committees testified that under the Plan the bondholders of A. B. & A. were accepting about 50% of the par value of their investment, without provision for accrued interest. (R. 168.) He stated that the earnings of the new company would be entirely disproportionate to the Commission's rate valuation of the properties, and that placing any par value on the common stock of the new company, or the property represented by it, would be meaningless. (R. 169.) In the Commission's first report it was stated that the stockholders of A. B. & A. had submitted the 1914 valuation of the road as showing that it was inequitable to permit Coast Line to acquire control

of the new company at the price proposed under the Plan and without provision for them. (R. 312, 314.) The Commission overruled this objection to the Plan and stated that its valuation under Section 19 (a) had no necessary relation to the exchange or cash value of the property, and that its valuation report (75 I. C. C. 645), indicated that the sum then fixed by it on which the carrier was entitled to earn a fair return had no relation to the market value of the road. (R. 314.) Yet, appellee, having acquired the property without provision for A. B. &. A. stockholders and on the theory that the rate valuation of A. B. & A. had no relation to the road's market value, attempted to employ the same valuation as its statement of its investment in road and equipment. And the court below, while it rejected appellee's contention that $24,000,000 was the present value of the road acquired, held that the Commission erred in not considering that sum as material evidence of appellee's investment. (R. 502.)

Even on the court's view that the value of the road should be determined, Section 19a (i) of the Act did not require the Commission to accept its prior valuation as "prima facie evidence of the value of the property." The value of the road for rate-making purposes was not prima facie evidence of its market value. The Commission in its valuation proceeding indicated that it was fixing only a sum on which the carrier was entitled to earn a fair return, and that even in 1923 there was a wide dis-

parity between the sum fixed and the market value of the road (75 I. C. C. 669, 672). The lower court in its first opinion did not intimate that the proper procedure for the Commission to follow would be to institute formal valuation proceedings under that Section; it inferred that informal valuation of the present cash worth of the property would be proper, thereby recognizing the distinction between fixing a rate and market value. Further, the facts in evidence before the Commission in the record of the entire proceedings destroyed any prima facie effect which conceivably could be attached to its prior valuation. Therefore, the lower court on its own view erred in holding that such valuation was material or pertinent evidence. *A fortiori*, it erred on the view for which the Government contends.

The decision of the District Court is not rested on the ground that Coast Line assumed guarantees on the preferred stock to which a value should be assigned. No mention is made of that fact in its opinion, and its first opinion mentions the fact only in support of its view that the road should be valued. Even if the propriety of the Commission's action in this regard can be urged before this Court, it is submitted that the reasons given by the Commission in its report of October 9, 1929, justify the failure to assign a value to the guaranty. It was there said (R. 491, 493–494):

> As stated in the original and supplemental reports, dividends on the preferred stock

were guaranteed by the Atlantic Coast Line at the rate of 5 per cent per annum, payable in semi-annual installments, such dividends to be cumulative and to accrue from January 1, 1928. The stock is redeemable at the option of the issuing company in whole, but not in part, on any semi-annual dividend date after January 1, 1935, at 103 and accrued dividends. Upon the winding up or dissolution of the corporation, the holders of the preferred stock are to receive par value of the stock and accrued dividends before recognition of common stock. The common stock is to have exclusive voting power except in case of default in dividend payment on the preferred stock for two successive dividend dates; in such case the preferred stock is to have exclusive voting power so long as the default shall continue. The correctness of this statement is not questioned. It thus appears that by its guaranty of dividends on the preferred stock the Atlantic Coast Line secured itself against default and insured its retention of control of the New Company through the voting rights of the no-par stock which it received. Considered by itself, and assuming that it must be regularly and permanently relied upon, a guaranty of dividends at 5 per cent might be computed at the par value of the stock upon which the dividend is paid. In this case, however, the preferred stock is subject to redemption after a short period of years, and by the exercise of this privilege the liability under the

guaranty can be terminated by the purchase of the stock at a premium of 3 per cent. Meanwhile the preferred stockholders have no voice in the corporation; and upon liquidation, which is also within control of the Atlantic Coast Line, they have preference in the distribution of assets to the extent of par value of their stock. The benefits of the guaranty and of interest in the assets of the New Company through ownership of its preferred stock can not be realized concurrently. Under these circumstances, it seems improper to assign a value to the guaranty in addition to the par value of the stock guaranteed.

* * * * *

It is true that the court did not accept the amount proposed by our bureau of accounts as a sufficient reflection of "fair cash value" either of the properties acquired or of the securities issued; but upon examination of the decision to determine the basis of this view, it is found in the assumption that the guaranty of dividend given by the Atlantic Coast Line was not given proper consideration by us. Responsive to this view, we have carefully reconsidered the record in its bearing upon the question. The function and value of the guaranty are discussed in preceding pages. The correctness of the analysis has not been questioned by the applicant. The value of the guaranty is re-

> flected in the value assigned to the preferred stock, which, as repeatedly stated, is reckoned at par. Without the guaranty, no value could have been assigned to it; and, as already indicated, an additional assignment of value would be an unwarranted duplication.

Other reasons assigned by the Court to support its decision are that the sum fixed may be employed for fixing rates and for determining recapturable profits. Rates fixed by the Commission under Section 15a (2) are based upon the "aggregate value of the railway property" as determined by the Commission in formal proceedings under Section 19a. Recapturable profits are determined under Section 15a (5) on the basis of whether the carrier is earning more than a fair return on that value. It is submitted that the entry here in question, the cost to appellee of acquiring the road, has no relation to such matters. If it be true that the figure here fixed will be admissable evidence in a future valuation proceeding, this furnishes no argument against the Commission's finding. Wholly apart from the determination here made, the Commission by Section 19a is required to investigate the facts as to this reorganization, including the history of appellee's organization and "any increases or decreases of stocks, bonds, or other securities."

It is also urged that the sum fixed by the Commission would allow appellee inadequate allowance for depreciation. The only depreciation which appellee is entitled to show for the purpose of the account here in question is that based on the cost to it of the road acquired. If the Commission's figure properly represents that investment, then for the purpose of this account depreciation must be based on that amount. In other words, the contention is based on the assumption that the Commission's finding was an incorrect statement of that investment. The fear that the Commission might use the depreciation so fixed as the depreciation allowable upon a future rate valuation is also largely fanciful. Even if the Commission chose to do so, by the decision of this Court in *United Railways* v. *West,* 280 U. S. 234, it could not limit annual depreciation allowances to cost.

The final contention is that the finding of the Commission is inconsistent with a previous ruling it has made. (R. 301.) In *Virginian Railway* v. *United States,* 272 U. S. 658, this Court said (p. 665):

> This Court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or with the alleged inconsistency with findings made in other proceedings before it.

CONCLUSION

It is respectfully submitted that the decree in the District Court should be reversed with directions to dismiss the petition either on the merits or for want of jurisdiction.

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JANUARY, 1931.

APPENDIX

The Interstate Commerce Act provides in part:

Section 1. (18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and

necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. * * *

(C. 91, 41 Stat. 477, 478; U. S. C., Title 49, secs. 1 (18) (20).)

Section 19a. (i) If notice of protest is filed the commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Com-

mission. (C. 92, 37 Stat. 703; c. 91, 41 Stat. 493; U. S. C., Title 49, sec. 19a(i).)

Section 20. (1) That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a

period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. (C. 104, 24 Stat. 386; c. 3591, 34 Stat. 593; U. S. C., Title 49, sec. 20.)

(5) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. * * * The commission shall at all times have access to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by carriers subject to this Act, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers. * * *.

(6) In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as

are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act. (C. 3591, 34 Stat. 594; c. 91, 41 Stat. 493, 494; U. S. C., Title 49, secs. 1 (5), (6).)

Section 20a. (2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and

which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2). (C. 91, 41 Stat. 494, 495; U. S. C., Title 49, Sec. 20a (2), (3).)

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In the Supreme Court of the United States

OCTOBER TERM, 1929

NO. 88

UNITED STATES OF AMERICA *and* INTERSTATE COMMERCE COMMISSION,
Appellants,
vs.
ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY,
Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

COUNTER SHOWING AGAINST THE JURISDICTION OF THE COURT IN THIS CAUSE, WITH MOTION TO DISMISS BECAUSE OF THE WANT OF A SUBSTANTIAL FEDERAL QUESTION, AND MOTION TO AFFIRM

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In the Supreme Court of the United States

OCTOBER TERM, 1929

NO. 837

UNITED STATES OF AMERICA *and* INTERSTATE COMMERCE COMMISSION, *Appellants*, vs. ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, *Appellee*.	ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

COUNTER SHOWING AGAINST THE JURISDICTION OF THE COURT IN THIS CAUSE, WITH MOTION TO DISMISS BECAUSE OF THE WANT OF A SUBSTANTIAL FEDERAL QUESTION, AND MOTION TO AFFIRM

In compliance with Rule 12, paragraph 2, of this Court, appellee makes counter showing against the jurisdiction asserted by appellants in this case:

I

Title 28, Section 47, of the United States Code provides that:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

Note: The record in this case has not been printed. It is, therefore, impracticable to refer to the pages.

The cases referred to are those brought to set aside orders of the Interstate Commerce Commission. A like appeal is allowed by this section from final decrees in such proceedings.

Under Section 266 of the Judicial Code (Title 28, Sec. 380) an appeal is allowed direct to the Supreme Court from orders granting or denying, after notice and hearing, an interlocutory injunction in cases dealing with the unconstitutionality of certain state statutes. A like appeal is allowed from final decrees. (Title 28, Sec. 345.)

Section 237 of the Judicial Code gives to the Supreme Court jurisdiction over direct appeal from

> "a final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity", etc.

The right of appeal is not more positively fixed for one of these classes than for the other.

Rule 12 applies to each class.

Jurisdiction is denied in this case for that there is a lack of a substantial federal question.

We do not understand that the Court is any more without the power to inquire as to the presence or absence of a substantial federal question in one class of these cases than in the other. A great many appeals are disposed of by the Court for that there is a want of a substantial federal question.

See Sambor vs. Philadelphia Rapid Transit Co.,
278 U. S. 572, and cases cited.

Rule 12 is not a part of the granting of an appeal; it is a part of the machinery for the disposition of the appeal.

II

THE APPEAL PRESENTS NO SUBSTANTIAL FEDERAL QUESTION

The case has been twice before the United States District Court for the Northern District of Georgia (A. B. & C. Railroad Co. vs. U. S., 28 Fed. 2d, 885, decided Oct. 26, 1928, and 37 Fed. 2d, 401, decided Jan. 18, 1930). The first case was an original bill to restrain the enforcement of an order of the Interstate Commerce Commission requiring appellee to enter upon its books the value of its investment in road and equipment on the basis of $9,260,000, while appellee contended that the value should be set up on the basis of $30,000,000. Appellee's action was rejected by the Director of the Bureau of Accounts of the Commission on August 3, 1927, and Appellee was directed to reduce the initial charges to Account 701 by $22,390,985.21. Account 701 is investment in road and equipment. Appellee filed with the Commission its supplemental petition protesting against the action of said Director of the Bureau of Accounts, praying that it be granted a hearing. The Commission denied the prayers of said petition on April 9, 1928. The effect of these proceedings was to require the Account 701, investment in road and equipment, to be entered upon appellee's books at $6,741,486.40, whereas appellee claimed this entry should have been $29,471,859.00.

The basis contended for by appellee was the value which the Commission, acting under Section 19a of the Act to Regu-

late Commerce, had found for this property under previous ownership in Valuation Docket No. 1 (75 I. C. C. 645), conformed to net changes in additions and betterments.

III

SHORT STATEMENT OF THE HISTORY OF THE PROCEEDINGS

The property involved and previously owned by Atlanta, Birmingham & Atlantic Railway Company was sold on the 22nd day of June, 1926, under foreclosure proceedings had in the United States District Court for the Northern District of Georgia. On the 23rd day of February, 1926, an agreement was made between bondholders' committees and Atlantic Coast Line Railroad Company, which was subsequently approved by the Court, which contemplated that the property would be sold and bought by a reorganization committee and that the reorganization committee would sell it to a corporation to be formed, which corporation is the appellee, and that the appellee would pay the reorganization committee for the property by issuing $5,180,344.07 of preferred stock—this stock having certain guaranties by the Atlantic Coast Line Railroad Company—and 150,000 shares of no par value common stock. The committee was to exchange the preferred stock with the bondholders and the common stock was to be transferred by the committee to the Atlantic Coast Line Railroad Company in consideration of the payment by that company of certain debts of the Atlanta, Birmingham & Atlantic Railway Company, specified in the agreements; those debts having priority; and in consideration of the guaranty of the dividends and redemption value of the preferred stock of Atlanta, Birmingham & Coast Railroad Company. The prop-

erty was sold and bought in by the committee, the sale was confirmed, and the shares of stock were issued to the committee and were used as contemplated in the agreement, as above set out.

Application was made to the Interstate Commission on behalf of appellee for a certificate of public convenience and necessity. This was made by the reorganization committee. It was dated the 8th of April, 1926, prior to appellee's incorporation. Hearings were had and an order entered on the 26th of October, 1926, finding the present and future public convenience and necessity require the acquisition and operation in Interstate Commerce by the reorganization committee, and by the Atlanta, Birmingham & Coast Railroad Company, of the railroad of the Atlanta, Birmingham & Atlantic Railway Company. In the meantime, the property was sold on June 22, 1926, conditioned upon the issuance of the orders authorizing the transaction by both the Atlanta, Birmingham & Coast Railroad Company and the Atlantic Coast Line Railroad Company. This sale was confirmed on June 23, 1926, subject to and conditioned upon the issuance by the Interstate Commission of appropriate orders allowing and approving the transaction.

On the 26th of October, 1926, the Commission issued its order certifying that:

> "The present and future public convenience and necessity require the acquisition and operation in interstate commerce by the reorganization committee, named and described in said report, and by the Atlanta, Birmingham & Coast Railroad Company, a corporation to be organized for the purpose of engaging in transportation subject to the Interstate Commerce Act, of the rail-

road of the Atlanta, Birmingham & Atlantic Railway Company, now operated by the receiver of said company, as described in said report and in the application in this proceeding." (117 I. C. C. 181.)

The action on the prayer that the new company (this appellee) be allowed to issue securities was deferred until charter should be granted. The charter of appellee was granted on November 22, 1926, and on the 25th of November it joined in the original petition filed before the Commission. In the meanwhile, and on the 16th of November, 1926, the special master and others had conveyed the property to George E. Roosevelt and J. A. Fowler, Jr., as representatives of the reorganization committee, and the court did on that day enter its unconditional confirmation of the sale.

On the 21st of December, 1926, the Commission issued its order allowing appellee to issue the aforementioned shares of preferred and common stock, with this proviso:

> "Provided, however, that authority to issue said stock is granted upon the express condition that, for the purposes of the accounting as provided in the classification of investment in road and equipment in the text of Account 41, 'Cost of road purchased', the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of the par value and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor." (117 I. C. C. 439, 443.)

Appellee on the first day of January, 1927, received conveyance of the property from the representatives of the bondholders' committee, paying therefor the consideration specified in the original agreement, to-wit, $5,180,344.07, par

value of its preferred stock, and 150,000 shares of its no par value common stock; the Coast Line Company guaranteeing the preferred stock and agreeing to pay the aforementioned items of prior claims. Appellee then proceeded to set up its books by charging Account 701, investment in road and equipment, $29,471,859.00, which was the value fixed on the property by the Commission, adjusted as hereinbefore set out. Thereupon, the Commission took the action hereinbefore described and rejected appellee's statement of its account.

Appellee then filed its bill in the United States District Court for the Northern District of Georgia seeking to set aside the order of the Commission, and the court rendered an opinion and final decree (28 Fed. 2d, 885) holding in part as follows:

> "The words of the order of December 21, 1926, were acted on by the parties and should have their fair operation. We think that they require that the valuation of the stock and the off-setting entries as to the investment in road and equipment should be fixed on a basis of a fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it." (Page 887.)

The Court then set aside the aforementioned order of the Commission rejecting appellee's statement of its accounts, and directed appellee's supplemental petition above referred to "to stand for a hearing before the Commission in due course". Neither the Commission nor the United States took appeal from that decree.

There was a further hearing before the Commission and on October 9, 1929, a decision was rendered by the Commis-

sion. The Commission adhered to its original order and figures, saying in part:

> "Counsel for the new company also contend that paragraph (1) of Section 19a requires that the value found under that section be treated as prima facie evidence of the value to be included in the investment accounts of the new company; *but we do not regard that value as pertinent or material in the determination of investment, as that term is used in our accounting regulations.* Upon consideration of the record as supplemented we find and conclude that the amount to be included in the balance sheet of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. The company will be expected to adjust its accounts in accordance with this finding within sixty days from the service of this report." (Italics added.)

It will thus be seen that the Court construed the orders of the Commission, upon which the parties at interest had acted, to mean that the disputed entry must be made on the basis of the value of the property acquired by Atlanta, Birmingham & Coast Railroad Company in consideration of its shares of common and preferred stock, from which determination the Commission took no appeal. It will then be seen that the Commission determined that this valuation was "neither pertinent nor material evidence in the determination of investment", and that the action of the Commission was thus in direct conflict with the law of the case as that had been fixed by the Court in its first decree.

Appellee thereupon filed supplemental pleadings setting up the facts which had occurred since the original decree above referred to, and hearing was had thereon, the Court

being presided over by three Judges. An opinion was rendered, and the Court, in its opinion and decree on this supplemental pleading, held that:

> "A fair estimate of the value of the property on January 1, 1927, would require consideration not only of the cash dealings at that time respecting it and of the conditions then surrounding its use, but also of the original cost or value of it. Because of the refusal to consider the latter evidence, we think the order unlawfully arrived at. The Commission's report makes but scant reference to value, and that reference is only by way of make-weight. It goes rather to the idea that the case is controlled by the cash expenditures of the Coast Line Company."

The Court then stated:

> "For these reasons we think the order must again be set aside and the matter reopened for further consideration by the Commission."

37 Fed. (2d) 403.

IV

POINT AT ISSUE

The point at issue is whether the figure to be entered upon the books of the Company under Account 701 "investment in road and equipment" should be on the basis of the par value of the preferred stock (approximately $5,180,344.07) plus the amount which the Atlantic Coast Line paid out in settlement of the prior claims referred to (approximately $4,080,699.80), or whether the figure should represent the value of the property received by appellee by the conveyance from the reorganization committee as above set out.

The lower court distinctly held that the figure should be ascertained upon the latter basis. No appeal was taken from that finding; it became the law of the case.

> Pierpont Mfg. Co. vs. Savannah, 153 Ga. 455, 457;
> Lucas vs. Alexander, 279 U. S. 573 (1);
> Federal Trade Commission vs. Pacific Paper Ass'n, 273 U. S. 52, 63.

This was an adjudication of the point at issue.

The Commission distinctly violated that finding in its second order and the lower court very affirmatively adhered to its original position in the second hearing.

> 37 Fed. 401, 403.

The Commission did not reconsider the case upon the basis which the Court in its final decree determined to be proper.

The order of the Commission complained of was void because of its violation of the previous adjudication of the Court on the same subject matter between the same parties which had become not only the law of the case but an adjudication of the issue.

V

THE REPORT OF THE COMMISSION IN THIS CASE IS AN ORDER

The Commission's last report began with this headnote:

> "Upon further hearing, application of Commission's accounting regulations to statement of the investment accounts of the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927, considered and *accounting prescribed.*"

It ended with the following:

> "Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. *The company will be expected to adjust its accounts in accordance with this finding within sixty days from the service of this report.*" (Italics added.) (158 I. C. C. 6.)

If this is not an order, then the limitation of sixty days would appear to be meaningless. (37 Fed. 402 (1).) In its opinion in the last citation the court found that it was an order, saying:

> "The Court, to avoid consideration of a restraining order, requested the Commission to extend the effective date of this requirement to give time for a full hearing. The Commission did not disclaim its action as final, but did extend the time of compliance for sixty days more. We think the requirement is to be treated as an order, disobedience of which could be punished, which may be reviewed in this court for the reasons stated in our former opinion."

We must bear in mind that the original order dated December 21, 1926 (117 I. C. C. 439, 442), began with the words "it is ordered" that appellee set up its accounts in the manner stated. The present proceeding is as though that original order had been put back into force. It is very much like the case of United States vs. New River Company, 265 U. S. 533. The order of the Commission in this case requires the carrier to do an affirmative act and is, therefore, within the meaning of the statutes giving the courts jurisdiction.

Pertinent cases are:

Chicago Junction Case, 264 U. S. 258, 264;
New York Railway Co. vs. U. S., 14 Fed. (2d) 350;
New River Case, supra.

Furthermore, the word "expect" has a secondary meaning, which implies demand and not anticipation.

See Sillman vs. Spokane Savings & Loan Society,
175 Pac. 296 (Wash.).

Webster's Dictionary gives as one of the meanings of "expect", "to demand; require".

Appellee respectfully asserts that the issue in this case is controlled by the decree and order first entered, from which no appeal was taken, and that said decree was binding on the Commission; and appellee further avers that said decree and the order thereon were just and right upon the merits of the controversy.

Appellee prays that the appeal be dismissed for want of a substantial federal question.

VI

MOTION TO AFFIRM

Appellee, acting under Rule 7, paragraph 4, moves the Court to affirm the decision of the lower court for that the questions on which the decision in the cause depends are so unsubstantial as not to need further argument.

In support of this motion appellee adopts the statements heretofore made.

The order of the Commission entered on the 21st of December, 1926 (117 I. C. C. 443), refers, as we have seen,

to Commission's Account 41. Copy of this account is attached as an appendix hereto.

The court below in its first decision held that Account 41 and the proviso in the order of the Commission of December 21, 1926, come "to the same thing". (28 Fed. 885, 886, lower part of right hand column.)

Account 41 requires that

> "Where the consideration given for the property is other than cash, such consideration shall be valued on a current cash basis."

The proviso in the order of the Commission in this case of December 21, 1926, requires "that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor".

Appellee received the road and equipment and other property sold at foreclosure sale in consideration of its shares of common and preferred stock. It did not purchase this property from the Atlantic Coast Line. It purchased it from the representatives of the reorganization committee, who had purchased it at foreclosure sale and who themselves had paid for it in the manner required by the decree. Appellee did not pay for this property in cash, but with its shares of preferred and common stock. The value of the property so received was the value of the shares. (28 Fed. 2d, 887.)

If the appellee should be required to enter upon its books a figure which does not represent the value of the property, it would make its books useless in ascertaining what is a fair return upon the aggregate value of its property as contemplated by Section 15a, subsection 2 of the Interstate Commerce Act, and of subsection 4 of the same section,

and of subsection 6 of the same section, which deals with the recapture of earnings. It would make nugatory the provision of paragraph 4, section 15a, which contemplates that the property investment account of the carriers will be given some consideration. Note Kansas City Southern Railway case, 231 U. S. 449. It would make the account useless in the matter of ascertaining depreciation that is contemplated by Section 20, subparagraph 5 of the Act. It would be out of harmony with Section 20, subsection 7 of the Act, which requires the carrier "to make full and correct entries in such accounts, records or memoranda of all facts and transactions appertaining to the carrier's business". It would work an especial hardship because under Section 20, subsection 7, of the Interstate Commerce Act the carrier is prohibited from keeping "any other accounts, records or memoranda than those prescribed or approved by the Commission". It would make the books of the company not only useless but very detrimental to both the carrier and the public in ascertaining the value of the property for rate-making purposes.

The power of the Commission as to accounts is to prescribe the "forms of any and all accounts, records and memoranda to be kept by the carrier under the provisions of this Act". (Sec. 20, subsection 5.)

A penalty is provided against any person who wilfully makes any false entries on the accounts or books, or who keeps "any other accounts, records or memoranda than those prescribed or approved by the Commission".

The right of the Commission under Section 20a, subsection 3, to prescribe "terms and conditions" in its orders as to the issuance of securities must not be construed to break down

other sections of the Act dealing with a specific subject in a specific way. One part of the Act must be construed in harmony with the other parts.

See: Robinson vs. B. & O. R. Co., 222 U. S. 506, 512;
Texas & Pacific R. Co., vs. Abilene Cotton Oil Co., 204 U. S. 426, 449.

A carrier's agents must swear to its reports. It would be quite an incongruity for the Commission to prescribe the contents of an oath to be taken by another. Furthermore, the "terms and conditions" referred to in this sub-division of Section 20a referred to terms and conditions pertinent to the indebtedness to be incurred or the securities to be issued, and not to subjects covered by other provisions of the Act, such as accounting and the keeping of records.

Because of the matters and things set out in the counter showing against the jurisdiction of the Court, and in this motion, appellee prays that the decision of the lower court be affirmed.

Respectfully submitted,

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Applicable Part of the Text of Account No. 41, Mentioned in the Order of December 21, 1926

"This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only the road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made."

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BRIEF ON BEHALF OF ATLANTA, BIRMINGHAM & COAST RAILROAD CO.

F. B. GRIER,
CARL H. DAVIS,
JNO. A. HYNDS,
ROBERT C. ALSTON,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

Appellants,

vs.

ATLANTA, BIRMINGHAM & COAST
RAILROAD COMPANY

Appellee.

No. 88

APPEAL FROM THE DISTRICT COURT OF
THE UNITED STATES FOR THE NORTHERN
DISTRICT OF GEORGIA

BRIEF ON BEHALF OF ATLANTA, BIRMINGHAM & COAST RAILROAD CO.

PART ONE

REFERENCE TO THE OPINIONS DELIVERED AND ORDERS ENTERED BY THE COURT BELOW AND BY THE INTERSTATE COMMERCE COMMISSION

This appeal is from a final decree of the United States District Court for the Northern District of Georgia (presided over by Mr. Circuit Judge Walker, Mr. District Judge Sibley

and Mr. District Judge Dawkins) entered on the 18th of January, 1930 (R. 503, Opinion R. 499, reported 37 Fed. 2nd, 401). This decree was entered on a supplemental bill filed by the Atlanta, Birmingham and Coast Railroad Company against the United States to enjoin an order of the Interstate Commerce Commission dated October 9th, 1929 (R. 486), wherein the Commission attempted to construe a condition in its former order of December 21st, 1926, to mean that said condition required appellee to set up its common and preferred stock on its books at $9,261,043.87.

Prior to this decree the same court had on October 26th, 1928, rendered a final decree upon the original bill (R. 222, Opinion R. 220, reported in 28 Fed. 2nd 885), and had construed the said condition and enjoined an order of the Commission whereby the Commission had required appellee to set up its stock, common and preferred, at this same figure, $9,261,043.87. This decree was not appealed from. The Commission, on December 3rd, 1928, voted not to appeal from it (43rd Annual Report, I. C. C., 108).

ORDERS OF COMMISSION

The orders of the Interstate Commerce Commission involved in this matter, were entered In the Matter of the Reorganization and Control of the Atlanta, Birmingham & Atlantic Railway Company. The first order and the report accompanying same is reported in 117 I. C. C., 181-190 (R. 311). The second order of the Commission was entered on December 21, 1926, 117 I. C. C., 442 (R. 320). The third order was entered April 9, 1928, and is quoted in the original bill at page 10 of the record. (See opinion of Court, R. 222). The fourth order was entered in the same matter

on October 9, 1929, 158 I. C. C., 6-14 (R. 486). The final valuation by the Commission of the properties involved as of June 30, 1914, is found in Valuation Docket No. 1, 75 I. C. C. 645. This valuation is referred to at page 158 of the record.

JURISDICTION

Counter showing was made by the appellee to the appellants' statement as to the basis on which appellants contend that this Court has jurisdiction to review the decree of the District Court. At the same time and on the same grounds appellee, acting under Rule 7, paragraph 4, of the Rules of this Court, moved the Court to affirm the decision of the lower court, for that the questions on which the decision in the cause depends are so unsubstantial as not to need further argument. Further consideration of those motions was postponed by the Court to the hearing of the case on the merits. Those motions are now referred to and it is respectfully requested that the arguments in this brief be applied to them.

CONTENTIONS OF APPELLEE

1

(a) The final decree rendered in the District Court on the original bill (Record 222-223) dated October 26, 1928, enjoining the enforcement of the Commission's order of April 9, 1928 (R. 10), which construed the proviso to the Commission's order of December 21, 1926 (R. 324), was correct. The effect of this decree was to enjoin the said proviso as it was construed by the Commission. Besides, it was *res adjudicata* of the proposition that the stock of the New Company and the offsetting entry in account 701, Investment in Road and

Equipment, should be set up by the New Company on its books upon the basis of the current cash value of the properties formerly owned by the Atlanta, Birmingham and Atlantic Railway Company and its receiver, acquired by the New Company in payment for its shares of stock, common and preferred.

The Commission in its subsequent proceedings acted contrary to that decree.

(b) Said decree was an adjudication that, in the ascertaining of said value, the value as fixed on this property as of June 30, 1914, by the Commission in its Valuation Docket No. 1 (75 I. C. C. 645) under section 19-a of the Interstate Commerce Act should be taken into consideration.

The Commission refused in all of its proceedings in this matter to give that valuation any weight whatsoever.

(c) Said decree amounted to an adjudication that the guarantee by the Atlantic Coast Line Railroad Company of the payment of the dividends on the preferred stock and the retirement value of that stock (in many circumstances in excess of par) is also an element to be taken into consideration in determining the value of those properties.

The Commission refused to give that decree this effect and acted to the contrary.

2

Independently of the said decree of the District Court, the Commission's construction of the proviso to its order of December 21, 1926, made after the parties had acted thereon, should not prevail, for that such construction will make the said order unjust and unreasonable; will give to it, after

acted upon, a meaning and scope not properly attributable to it; will make the order exceed the jurisdiction of the Commission, because it will prescribe the *contents*, rather than the *form*, of the New Company's accounts and records, and will require the New Company to give up its initiative over the contents of its accounts, and will require the keeping of its accounts in a manner which will make them worse than useless in reflecting its condition as to rate making, depreciation, net return on the fair value of its property, recapture of excess earnings, and its credit standing; and as well in exhibiting its affairs to its stockholders and to public bodies. It will also result in requiring the keeping of its books so that evidential value attributed to them by the Act to Regulate Commerce will make them reflect its condition as to all of those matters in a manner incorrect in fact, and unjust to the Company and to all other parties concerned. The action of the Commission ignores the requirement of Section 19a, subsection (i), that the final valuation of railroad properties by the Commission shall be prima facie evidence of the value of the property in all proceedings under the Act to Regulate Commerce.

The Commission's construction of the proviso to its said order of December 21, 1926, is not justified by its words, nor by the facts, nor by the law.

The properties acquired by the New Company in consideration of its stock should be entered on its books at the cash value thereof on the date they were so acquired.

3

(a) The acts of the Commission in its first fixing of the figures at which these properties are to be carried on the

books of the New Company culminating in its order of April 9, 1928 (R. 10), amounted to an order over which the Court had jurisdiction. The first decree so adjudged it and there was no appeal therefrom.

(b) The fourth act of the Commission, October 9, 1929 (R. 480-494), amounted to an order over which the Court had jurisdiction.

4

The appeal should be dismissed on the motions heretofore filed.

5

The finding of the Commission made October 9, 1929 (R. 486), subsequent to the decree of the Court on the original bill was not in accordance with the decree of the Court rendered on October 26, 1928 (R. 223).

6

The decree of the lower court appealed from is correct, and unless the appeal is dismissed that decree should be affirmed.

STATEMENT OF THE CASE

Prior to February 23, 1926, the properties of Atlanta, Birmingham & Atlantic Railway Company, herein sometimes referred to as the Old Company, were in the hands of a receiver appointed by the U. S. District Court for the Northern District of Georgia in suits instituted against it by its creditors and trustees under mortgages executed or assumed by it. The bondholders offered to sell the properties to Atlantic Coast Line Railroad Company, but the offer was

refused (R. 290). Finally, on February 23, 1926, there was executed by representatives of the bondholders and by Atlantic Coast Line Railroad Company the agreement of February 23, 1926, appearing on pages 83-90 of the record.

AGREEMENT OF FEBRUARY 23, 1926

Under this agreement the bondholders of the A. B. & A. Railway Company were to bid at foreclosure sale for the properties of the Old Company and its receiver and if successful were to organize a New Company under the laws of the State of Georgia. The New Company was to have authority to issue non-voting, 5% preferred stock of $100 par value and in an amount sufficient to provide $60 of preferred stock for each $100 of bonds of the Old Company outstanding, and also to issue 150,000 shares of voting no par common stock and was to issue said stock, common and preferred, in acquiring the said properties from the purchasers at foreclosure. The Old Company or its receiver had outstanding obligations shown in Exhibit A to said agreement and then estimated at $3,677,500 (R. 90), but subsequently ascertained to be $4,080,699.80 (R. 487) having priority over the bonds of the Old Company. The Atlantic Coast Line Railroad Company agreed to furnish funds with which to pay such amounts already matured and to provide for the payment, at maturity, of such as were not yet due, and also to guarantee the 5% dividend on the preferred stock and the retirement value thereof which is not less than par value in any circumstances, and in others, $103 per share plus accrued dividends. The bondholders were to convey to the New Company the properties acquired at foreclosure subject only to such of the items included in said Exhibit A as might not, at the time of such conveyance, have been paid because not yet matured (R. 86),

and the New Company was to pay for said properties by issuing to the bondholders all of its stock, common and preferred. The preferred stock, guaranteed as aforesaid, was to be delivered by the Committee to the bondholders in exchange for their bonds, and the entire 150,000 of voting common stock was to be sold by the purchasers to Atlantic Coast Line Railroad Company. (See opinion of Commission, R. 313 and of Court, R. 220, 222).

PLAN AND AGREEMENT OF REORGANIZATION

The agreement of February 23, 1926, was made the basis of the Plan of Reorganization, herein sometimes called the Plan, which was adopted by the bondholders, and appears on page 91-111 of the record. This Plan was adopted for the purpose of making the agreement effective (R. 97).

APPLICATIONS TO THE COMMISSION FINANCE DOCKETS 5454 AND 5470

Pursuant to the plan and agreement of reorganization, the bondholders committee filed with the Interstate Commerce Commission its application on behalf of the company to be organized, "pursuant to said plan and agreement of reorganization dated February 23, 1926" (which plan was recited in the application), for the purpose of securing the approval by the Commission of the acquisition and operation by the New Company of the lines of railroad of the A. B. & A. Railway Company and for authority for the issuance by the New Company of preferred stock and common stock in accordance with the Plan (R. 224). In this application it was stated that,

> "Fifth. The purposes and uses of the proposed issue of capital stock are to acquire the lines of railroad and

other properties of the Old Company and its Receiver, as aforesaid, and to carry out the plan." (R. 224).

Subsequent to the filing of the application on behalf of the New Company just above mentioned, Atlantic Coast Line Railroad Company, on April 12, 1926, filed with the Interstate Commerce Commission its application for authority in accordance with the plan to execute the guaranty of the preferred stock of the New Company and to acquire control of the New Company by the acquisition from the bondholders of the entire issue of common stock of the New Company. This application was given Finance Docket No. 5470 (R. 448).

Pursuant to the requirements of the Interstate Commerce Commission the bondholders filed the return to questionnaire, appearing on page 258 of the record. In that return the following statement appears, among others:

> "The reorganization committee, or its nominee, will hold control over the applicant until the consummation of the plan, at which time control will be transferred to Atlantic Coast Line Railroad Company. Control will be in the form of the entire outstanding common stock." (R. 260).

FORECLOSURE SALE

On June 22, 1926, the Special Master offered for sale the properties of the old A. B. & A. Railway Company. At that sale the properties were purchased by the purchasing committee of the bondholders of the old A. B. & A. (R. 134). The bid of such purchasers was conditioned on the making by the Interstate Commerce Commission of orders conferring authority substantially sufficient to enable the parties to carry out the plan and agreement of reorganization (R. 138 and

314). The petition of the purchasers for confirmation of the sale, showing these facts, is set out on page 130 of the record and the Special Master's report of sale appears on page 135 of the record.

FIRST ORDER OF THE COMMISSION

Under date of October 26, 1926, the Interstate Commerce Commission entered its first report and order (R. 311). By this report and order the Commission approved the agreement of February 23, 1926, and the plan of reorganization, authorized the acquisition by the Atlantic Coast Line of control of the New Company to be organized and stated:

> "There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line is in the public interest. The sentiment in favor of the plan in the territory served by the A. B. & A. is apparently unanimous and earnest. Approval should therefore be given and the necessary authority issued, unless there be something in the terms and conditions of the proposed acquisition, or in the consideration, so inequitable as to require modification in the public interest. We find nothing of this character in the arrangement. It is true that there is wide disparity between the proposed price to be paid by the Atlantic Coast Line for its control of the property and the value of the property viewed as a basis for rate making, but our highest court has distinguished between value for rate-making purposes and exchange value. Galveston Electric Company v. Galveston, 258 U. S., 388." (R. 316-17).

The Commission held:

> "The new company has not been incorporated. We are advised by counsel for the applicants that incorpora-

tion under the laws of the State of Georgia is considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the new company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to assume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the new company, accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order." (R. 318).

ORGANIZATION OF A. B. & C. R. R. CO.

Pursuant to this authority by the Commission, the sale of the properties of the old A. B. & A. and its receiver to the bondholders committee was unconditionally approved by the order of the United States District Court entered November 16, 1926, and those properties of the old A. B. & A. were on that day conveyed to the bondholders purchasing committee (R. 234). Thereupon, the said purchasers, Geo. E. Roosevelt and J. A. Fowler, filed application with the Secretary of State of the State of Georgia, asking for a charter for the new company to be organized in accordance with the plan and to acquire the properties purchased by said committee at foreclosure (R. 231). The charter was issued by the Secretary of State on November 22, 1926 (R. 241-3). By this charter the new company was given authority, inter-alia,

"for the issue of all or any of said fifty-two thousand shares of preferred and/or said one hundred and fifty thousand shares of common stock for the purpose of acquiring and paying for the property and assets described in article first hereof and for the purpose of carrying

out the above-mentioned plan and agreement of reorganization dated February 23, 1926." (R. 240).

Pursuant to this charter, the New Company was organized and was authorized to issue $5,180,344.07 par value of preferred stock and 150,000 shares, without par value, of common stock, and the officers of the New Company were authorized to cause to be done such acts or things as were necessary to carry out and observe the agreement of February 23, 1926, and the plan of reorganization (R. 246-7). The New Company then joined in and adopted the application then pending before the Commission (R. 289).

SECOND ORDER OF THE COMMISSION AND CONDITION INVOLVED IN THIS CASE

Without further hearing the Interstate Commerce Commission, after consideration of the foregoing, made its second report and order (R. 320) under date of December 21, 1926, and authorized the issuance by the New Company of $5,180,344.07 of preferred stock and the 150,000 shares of no par common stock and also authorized the guaranty by the Atlantic Coast Line Railroad Company of the dividends on the preferred stock and the retirement value thereof in accordance with the plan. The authority of the Commission to the New Company for the issuance of its stock was made subject to condition as follows:

> "Provided, however, and authority to issue said stock is granted upon the express condition that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in

excess of its par value; *and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.*" (R. 324). (Italics added).

Account 41, referred to in this condition, is shown on page 435 of the record. It provides:

> " . . . Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis . . . "

The construction of this condition, and its application to the facts herein, was the actual and controlling issue in the original case. Its construction and application were settled in the first decree. The settlement is not recognized by the appellants.

CONSUMMATION OF THE PLAN

Pursuant to the authority of the Commission given by the two orders of October 26th and December 21st, 1926, the sale was consummated to the New Company in consideration of its two classes of stock on January 4, 1927 (as of January 1, 1927).

SUBSEQUENT ACTION BY THE COMMISSION LEADING UP TO ITS THIRD ORDER

The New Company employed Haskins & Sells, Certified Public Accountants, to assist it in preparing its balance sheet and opening its books. On June 7, 1927, Haskins & Sells submitted a tentative balance sheet as of January 1, 1927, with their letter which appears on page 296 of the record. The balance sheet so submitted (R. 298) was prepared after consideration of the condition in the order of the Commission

of December 21, 1926, and was based on the value of the property received by appellee in exchange for its stock.

This balance sheet was submitted to the Commission and on August 3, 1927, the Commission, through letter of Dr. Wylie, its Director of the Bureau of Accounts, directed appellee to reduce its entry in "Investment in Road and Equipment" (Account 701) by $22,390,985.21, or from $29,471,859.00 to $7,080,873.79 (R. 300, 16).

The reckoning of the preferred stock at par, or $5,180,344.07, was not objected to. Dr. Wylie determined that the common stock must be set up at $4,080,699.80, the amount paid by the Coast Line for debts of the Old Company, or its receiver. From this he deducted the $1,918,117.46 of accrued depreciation, leaving $2,162,582.34. He then deducted this amount from the $24,553,567.55 shown against the common stock, leaving $22,390,985.21, which is the amount by which he says the "Road and Equipment" total of $29,471,859.00 must be reduced, leaving $7,080,873.79 to represent the property acquired by appellee, a part of which property had been valued as of June 30, 1914, by the Commission, at $23,242,107.00 (R. 158-60).

THIRD ORDER OF THE COMMISSION. ENJOINED BY FIRST DECREE

Appellee, upon receipt of this letter, filed with the Commission its supplemental application (R. 289) and the Statement of Facts (R. 325) showing that under the plan as approved and carried out, the New Company, appellee, did not and could not receive any part of the $4,080,699.80; that it received for its stock, common and preferred, the property of the Old Company, A. B. & A. Railway Company, that the

condition in terms referred to the "amount received" by the appellee for the stock and that the requirement in the letter from Dr. Wylie, above referred to, was contrary to the facts and based on a misconstruction or total disregard of the terms of the proviso of the order of December 21, 1926. Appellee asked that the Commission overrule Dr. Wylie and permit it to show, on its books, as the amount received for its common stock, the value of the property of the Old Company, less the par of the $5,180,344.07 of preferred stock (R. 294-5). It was the property which was "received" for its said shares of stock.

Without a hearing the Commission, by its order of April 9, 1928, denied the application (R. 10).

FIRST DECREE OF DISTRICT COURT

Thereupon, appellee filed in the United States District Court for the northern District of Georgia its bill (R. 1). The Interstate Commerce Commission and the United States answered (R. 19 and 23). After hearing, the said Court rendered its opinion (R. 220) and entered its decree of October 26, 1928 (R. 222). In its opinion, after stating the facts, the Court said:

> "Two methods of valuing the common stock are contended for, one, that it was worth the value of the roads acquired, less the value represented by the preferred stock; the other that it was worth what the Coast Line Company paid for it in cash, $4,080,000. The requirement of the order of December 21st, 1926, that the common stock must be reckoned 'on a basis not in excess of the amount received therefor' comes to the same thing as the requirement of rule 41, and meets the same divergent constructions. It can not be said with accuracy

that the money paid by the Coast Line Company was received by the Coast Company for its stock. The Coast Company received for the stock the deed of the bondholders' representatives covering the railroads, and they in turn sold the common stock to the Coast Line Company, and for a consideration not only of $4,080,000 actually paid, but also of heavy guaranties of dividends on the preferred stock over and above its par already allowed in this valuation." (R. 221).

The Court also found that the entry in the account as to "Investment in Road and Equipment"—Account 701—"*should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition.*" (R. 221). (Italics added).

It then decreed:

"*that the equities are with the complainant* and that the order of April 9th, 1928, complained of, in so far as the same fixed the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside and all persons interested in the enforcement of said order, and their officers and agents, are permanently enjoined from enforcing the same, and that the supplemental application of the complainant in which said order was entered by the Interstate Commerce Commission stand for further hearing before said Commission." (R. 223). (Italics added).

FOURTH ORDER OF THE COMMISSION ENJOINED BY THE DECREE APPEALED FROM

The Commission voted not to appeal from this decree (43rd Annual Report, I. C. C., 108) and set the case for further hearing before its Examiner (R. 204). At this hearing Witness Bugg, for appellee, identified the property ac-

quired by it as that valued by the Commission in 75 I. C. C. 1, and showed that the value so found, plus net additions and betterments to January 1, 1927, amounted to $25,744,863.86 (R. 207 and 158).

The Examiner of the Commission, who presided at the hearing, filed a Report Proposed (R. 467) and concluded:

> "The Commission's report of valuation of the railroad properties operated by the Atlanta, Birmingham & Atlantic, as reported in 75 I. C. C. 645, endeavored to make it plain that its valuation *had no relation to the worth of the properties*, but was merely a sum upon which the carrier was entitled to earn a fair return . . . "
>
> "The Commission should find that the carrier may include in its balance sheet statement in investment in road and equipment as of January 1, 1927, an amount not exceeding $9,261,043.87." (R. 473). (Italics added).

Appellee filed Exceptions to this Proposed Report (R. 473) and showed that the Examiner had not given to the decree of the District Court "the conclusive effect that must under the law be accorded" to it (R. 474-5); had disregarded the meaning of the condition, as fixed by the Court, and had recommended that the Commission require the setting up by appellee on its books of the identical figure, use of which the Court had enjoined (R. 474).

Argument of these exceptions was had before the Commission and on October 9, 1929, the Commission made its fourth report (R. 486). The headnote of this report is as follows:

> "Upon further hearing, application of commission's accounting regulations to statement of the investment

accounts of the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927, considered and *accounting prescribed.*" (Italics ours.)

The concluding paragraph of the report is as follows:

> "Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. *The Company will be expected to adjust its accounts in accordance with this finding within 60 days from the service of this report.*" (R. 494). (Italics ours).

This, again, is the identical figure use of which had been enjoined by the Court by its decree of October 26, 1928 (R. 222). The only supplemental evidence in the record was that of Witnesses Bugg and Greene at the February, 1929, hearing, who identified the property acquired by appellee as that valued by the Commission as of June 30, 1914, in 75 I. C. C. 1, plus additions and betterments (R. 206-10) on which basis, as shown by Exhibit A filed by Witness Bugg, the property acquired by appellee in exchange for its stock was worth at least $24,481,893.86 (R. 160).

With respect to this valuation, the Commission said in its report:

> "Counsel for the New Company also contend that paragraph (i) of section 19a requires that the value found under that section be treated as prima facie evidence of value to be included in the investment accounts of the New Company; *but we do not regard that value as pertinent or material evidence in the determination of investment as that term is used in our accounting regulations.*" (R. 494). (Italics added).

Compare this with the Court's opinion of October 26, 1928, as follows:

> "The words of the order of December 21st, 1926, were acted upon by the parties and should have their fair operation. *We think they required that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it.*" (R. 221). (Italics added).

Again the Commission in its report stated:

> "The proviso in the order of December 21, 1926, previously quoted, was an application of the accounting orders to these transactions. *The consideration given by the New Company, considered as a separate entity, was in the form of stock, preferred and common.* In setting up the value of the preferred stock we required that it be reckoned on a basis not in excess of its par value which was $5,180,344.07; and the order further provided that the cash value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line must be reckoned on a basis not in excess of the 'amount received therefor.' As already stated this amount has since been found to be $4,080,699.80." (R. 491). (Italics added).

The Court's decree of October 26, 1928, was directly to the contrary. The Commission appears to have been dealing with the Court's decree as though it was not binding upon it.

STRATEGIC LOCATION OF THE RAILROAD INVOLVED

The lines now owned by the Atlanta, Birmingham & Coast Railroad Company were allotted by the Commission to the

Atlantic Coast Line and Louisville & Nashville system in its tentative plan of consolidation of railroads, which was promulgated August 3, 1921. (63 I. C. C. 455-460). It was retained in that group in the final plan. (159 I. C. C. 522-534).

At page 542 the Commission, describing the Atlantic Coast Line-Louisville & Nashville system, said:

> "At one point, however, it is markedly weak, due probably to the independent evolution of its two great wings—eastern and western. This defect is a lack of connection affording through routes between the North and South across the whole of middle Georgia between Atlanta and Waycross. The first point concerning its recreation is the bridging of this gap."

The Commission then notes the location of the Atlanta, Birmingham & Atlantic Railway and its relation to those two roads, saying (p. 543):

> "Despite its history, a very considerable value attaches to the Atlanta, Birmingham & Atlantic Railway. This arises from its relation to the larger systems round about, particularly the Atlantic Coast Line and Louisville & Nashville."

SECOND DECREE OF COURT APPEALED FROM

After the service of this report (R. 500) appellee filed in the District Court its supplemental bill (R. 480). That Court, after answer by the United States and the Commission (R. 498 and 495) entered its opinion and decree of January 18, 1930.

In its opinion the Court found:

> "The concluding words 'Provided, however, and authority to issue said stock is granted upon the express

condition that . . . the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor,' can mean only the amount received by the Coast Company for its stock, and not what was paid by the Coast Line Company to the bondholders committee for it. *The Coast Company received, and was, under the reorganization plan, to receive not a dime of money, but only a deed to the railroads. So far as it was concerned it paid no cash for the deed, but only its stock.* The commission's accounting regulation No. 41, referred to expressly in the order of December 21st, 1926, requires 'where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis.' The stock which constituted the consideration for the roads must, therefore, be valued on a cash basis. Because it represented on January 1st, 1927, nothing except the railroads purchased, it can be valued only by valuing them. So that the requirement of the regulation and of the condition in the order come practically to the same thing, each necessitating a valuation of the railroads as of January 1st, 1927. Notwithstanding the close connection between the Coast Line Company and the new Coast Company, they are separate corporations. The New Company is but beginning its career. Its stockholders may change and creditors having separate interests may arise. Separate corporate organization can sometimes be disregarded in order to defeat fraud or reach the true rights of stockholders and creditors, but the separate accounting of railroads under the interstate commerce act presents no such case. This separately organized railroad enterprise is entitled to have its separate and independent accounts under the usual regulations, and this was plainly indicated by the order of December 21st, 1926. *The entry here in question may hereafter constitute admissible evidence in fixing rates, recapture of profits, ascertainment of deprecia-*

tion, assessment of advalorem taxes and the like. The purchase of the railroads by the Coast Company with its stock was its own transaction. It was unaffected (save that the foreclosure sale was held up until the Coast Line Company should fully pay its assumptions to the bondholders committee) whether those assumptions had turned out to be $3,677,500.00, as was first supposed, or $4,080,697.00 as turned out to be true, or $10,000,000.00 as might have happened. In any case the cash value of the railroads diminished by the undisputed value of the preferred stock represents the investment of the common stock under accounting regulations No. 41 and under the terms of the enabling order of December 21st, 1926. The cash payments by the Coast Line Company in acquiring the common stock from the bondholders committee did not necessarily measure its value, nor did they make the purchase by the Coast Company of the railroads a cash transaction so as to put into operation the provisions of regulation No. 41 touching cash purchases. It is true that regulation seeks to have recorded the historical fact of the amount invested rather than the value of the investment. The necessary exception recognized in the regulation does exist when, as here, the purchasing company does not pay cash. The Coast Line Company's purchase of the stock has this much to do with it: It is a voluntary cash transaction occurring at the critical time and having a close relationship to the value of the railroads, inasmuch as it expresses their value as estimated by the bondholders committee and the Coast Line Company. It is evidence, but not the exclusive nor conclusive evidence of the then actual cash value of the railroads." (R. 501-2).

By its decree, the Court adjudged:

"That the equities are with the complainant, and that the order of October 29th, 1929, of the Interstate Commerce Commission herein complained of, in so far as the

same fixes the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside and that the persons interested in the enforcement of said order, and their officers and agents, are permanently enjoined from enforcing the same, and that the supplemental application of the complainant on which said order was entered by the Interstate Commerce Commission stand for further hearing before said commission."

From that decree the United States and the Commission have appealed (R. 504).

In the Appendix there are set out copies of Section 20 (7) of the Act and of Account 41 from the Classification of Investment in Road and Equipment of Steam Roads, with the note thereto (R. 435).

PART TWO

BRIEF OF THE LAW

SUMMARY

I. (a) The final decree of the United States District Court for the Northern District of Georgia, dated October 26, 1928, on the original bill (R. 222-223) was an adjudication of the issues involved in this case.

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Herman on Estoppel and Res Judicata, p. 548, §457; Vol. 1, p. 118;
Grubb vs. Public Utilities Commission, 281 U. S. 470;
Baltimore Steamship Co. vs. Phillips, 274 U. S. 316, 319;
United States vs. California & Oregon Land Co., 192 U. S. 355;
United States vs. Moser, 266 U. S. 236, 241;
Cromwell vs. County of Sac, 94 U. S. 351-2-3;
Himely vs. Rose, 5 Cranch 313, 316;
Central Trust Co. of New York vs. Western North Carolina Railroad Co., 89 Fed. 24, 27, 28;
Pentlarge vs. Pentlarge, 22 Fed. 412;
City of Omaha vs. Omaha Electric Lt. & Power Co., 255 Fed. 801, 802 (C. C. A.);
Vanwert vs. Boyes, 140 Ill. 89 (29 N. E. 710);
Root vs. Woolworth, 150 U. S. 401, 410, 411;
Osage Oil Co. vs. Continental Oil Co., 34 Fed. (2d) 585;
International Ry. Co. vs. Prendergast, 29 Fed. (2d) 296.

(b) The decree rendered on October 26, 1928, was a final decree.

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1st Black on Judgments, §21, p. 31;
Colorado Eastern Ry. Co. vs. Union Pacific Ry. Co., 94 Fed. 312 (C. C. A.);

McGourkey vs. Toledo & Ohio Ry., 146 U. S. 536;
St. Louis Iron Mountain & Southern Railroad Co. vs. Southern Express Co., 108 U. S. 24, 29;
Lewisburg Bank vs. Sheffey, 140 U. S. 445;
Beebe vs. Russell, 19 Howard 283;
Forgay vs. Conrad, 6 Howard 201;
Thomson vs. Dean, 7 Wall. 342;
French vs. Shoemaker, 12 Wall. 86.

II. The action of the Commission constituted an order over which the Court has jurisdiction.

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Commerce Court Act of June 18, 1910;
Urgent Deficiencies Act of Oct. 22, 1913;
U. S. Code, Title 28, §41 (28);
U. S. & I. C. C. vs. New River Co., 265 U. S. 533;
New York Railway Co. vs. U. S., 14 Fed. (2d) 850;
Chicago Junction Case, 264 U. S. 258, 264;
U. S. vs. Illinois Central R. R., 244 U. S. 82;
Proctor & Gamble Co. vs. U. S., 225 U. S. 282;
Piedmont & Northern Ry. Co. vs. U. S., 280 U. S. 469;
Act to Regulate Commerce, §20 (7);
Sillman vs. Spokane Savings & Loan Society, 175 Pac. 296 (Wash.).

III. The construction which the Commission gives to the proviso to its order of December 21, 1926, brings it in conflict with paragraph (i) of Section 19a of the Interstate Commerce Act.

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Interstate Commerce Act, §19a, ¶ (i);
St. Louis & O'Fallon R. Co. vs. United States, 279 U. S. 461, 484;
U. S. vs. I. C. C., 252 U. S. 178, 187.

IV. The Commission's construction of the proviso to its order of December 21, 1926 (R. 324), if allowed to

become effective, will work great hardship and bring about many inconsistencies.

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Act to Regulate Commerce, §20 (5); §15a (3) (6);
Smyth vs. Ames, 169 U. S. 466, 547;
Minnesota Rate Cases, 230 U. S. 352;
Willcox vs. Consolidated Gas Co., 212 U. S. 19, 41;
St. Louis & O'Fallon Ry. Co. case, 279 U. S. 461;
Kansas City Southern Ry. Co. vs. U. S., 231 U. S. 423, 440.

V. The case of Passaic Consolidated Water Company vs. Board of Public Utility Commissioners (5 N. J. Misc. 1078), 104 N. J. 666, is especially apposite to the case at bar.

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Kansas City Southern Ry. vs. U. S., 231 U. S. 423, 449.

VI. Some of the things for which a system of accounts of a railroad company should be useful and as to which the accounts of the appellee would be rendered worse than useless if the Commission's construction of the proviso to its order of December 21, 1926, holds. Some of those things are the use of the accounts in the ascertainment of fair return, the evidential value of books, recapture of earnings, credit standing, property investment, and depreciation.

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Interstate Commerce Act, §15a, (2) (4) (6); §19a; §20, (5) (7);
United Railways vs. West, 280 U. S. 234, 254;
Kansas City Southern Ry. case, 231 U. S. 449.

VII. The construction which the Commission places on the proviso to its order of December 21, 1926, would make that order to exceed its jurisdiction.

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Interstate Commerce Act, §20a, (5);
Hepburn Act of June 29, 1906, 39 Stat. L. 594, §7;
U. S. vs. N. C. & St. L. Ry., 217 Fed. 254, 263, 264.
U. S. vs. Chicago, etc., R. R. Co., decided Jan. 5, 1931.

VIII. Meaning of the expression "terms and conditions" as used in Section 20a, sub-division 3 of the Act to Regulate Commerce.

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Act to Regulate Commerce, §20a, (3);

Robinson vs. B. & O. R. R. Co., 222 U. S. 506-512;

Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co., 204 U. S. 426-448;

Lewis, Sutherland Statutory Construction, 2nd Ed., Vol. 2, p. 847, §§443 and 448, and authorities cited;

Bankers Trust Co. vs. Bowers, 21 A. L. R. 922 (292 Fed. 793, C. C. A.), 25 R. C. L. 1022; 1008 §247;

U. S. vs. Landram, 118 U. S. 81, 85;

I. C. C. vs. Chicago Great Western Ry., 209 U. S. 108, 119;

Great Northern Ry. vs. Minnesota, 238 U. S. 340, 346;

Southwestern Bell Telephone Co. vs. Commission, 262 U. S. 276, 289;

Terral vs. Burke Construction Co., 257 U. S. 529, 532;

Frost Trucking Co. vs. Commission, 271 U. S. 583, 593;

Hanover Fire Ins. Co. vs. Harding, 272 U. S. 494, 507;

Adair vs. United States, 208 U. S. 161, 180;

Western Union vs. Kansas, 216 U. S. 1, 47;

C. B. & Q. R. R. vs. Osborne, 265 U. S. 14, 16.

I

(a) THE FINAL DECREE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, DATED OCTOBER 26, 1928, ON THE ORIGINAL BILL (R. 222-223) WAS AN ADJUDICATION OF THE ISSUES INVOLVED IN THIS CASE

The final decree on the original bill

> "decreed that the equities are with the complainant and that the order of April 9, 1928, complained of, in so far as the same fixed the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside and all persons interested in the enforcement of said order, and their officers and agents, are permanently enjoined from enforcing the same, and that the supplemental application of the complainant in which said order was entered by the Interstate Commerce Commission stand for further hearing before said commission."

The controlling questions are:

(1) Did this decree amount to an adjudication of the issues presented in the supplemental bill?

(2) If that be not so, then what is the correct meaning and application of the proviso to the Commission's order of December 21, 1926? (R. 324).

This decree adjudged that:

1. The properties now owned by the appellee were sold at foreclosure sale to representatives of the bondholders of the companies previously owning those properties, who proposed to organize a corporation, the Coast Company, to take

over and operate them. (The court refers to the appellee as the Coast Company.)

2. The New Company (the appellee) was to issue, in payment for those properties, $5,180,000 of preferred stock and 150,000 shares of common stock without par value. (The court states the amount of the preferred stock in round figures; the actual amount is $5,180,344.07.)

3. The preferred stock was to be used to pay the bondholders' claims and the common stock was to be sold to the Atlantic Coast Line Railroad Company in consideration of its guaranty of the principal and dividends of the preferred stock and of its payment, or assumption, of accumulated losses in operation, taxes, and receivership and reorganization expenses, amounting, as it turned out, to $4,080,699.80.

4. Proceedings before the Commission were instituted to obtain leave to operate the roads and to issue the stock, and by separate proceedings the Atlantic Coast Line sought authority to acquire the common stock on the terms above set forth. These proceedings were consolidated and by two successive orders the authorities sought were granted.

5. The representatives of the bondholders deeded the railroads to the New Company in consideration of its entire stock issues and disposed of the preferred stock to the bondholders and of the common stock to the New Company, as proposed.

6. The Commission's order of December 21, 1926, imposed a condition as follows (R. 220):

> "Provided, however, and authority to issue said stock is granted upon the express condition, that for the purpose of accounting, as provided in the classification of

investment in road and equipment in the text of Account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

7. The New Company undertook, in August, 1927, to comply with this provision. "It proposed, since its entire stock was exchanged for the railroads, to treat them as worth thirty million dollars, in round figures, on the basis of the valuation of the railroads as of 1914, made by the Commission itself, under section 19a of the commerce act." Its proposal was rejected and the Commission insisted upon a valuation of $9,260,000. The New Company then made a supplemental application to the Commission, asking for a hearing and for a construction of the proviso in the order of December 21, 1926, and for leave to use the figures and basis first proposed. Without a hearing the application was denied on April 9, 1928.

8. The consideration paid by the New Company for the property was its "stock, preferred and common."

9. The requirement of the order of December 21, 1926, that the common stock must be reckoned "on a basis not in excess of the amount received therefor" comes to the same thing as the requirement of Rule 41.

10. It can not be said with accuracy that the money paid by the Atlantic Coast Line Railroad Company was received by the New Company, the appellee, for its stock. The New Company received for its stock "the deed of the bondholders' representatives covering the railroads and they in turn sold

the common stock to the Coast Line Company for a consideration not only of $4,080,000 actually paid, but also of heavy guaranties of dividends on the preferred stock over and above its par already allowed in this valuation." The court might also have added that the guaranty was not only of dividends but of the retirement value, which is in excess of par in some instances and never less than par.

11. The words of the order of December 21, 1926, were acted on by the parties and should have their fair operation. These words in the condition required "that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it."

12. The action of the Commission constituted an order over which the court had jurisdiction.

All of the above mentioned findings of the court were covered by issues made by the bill (R. 1) and the answer of the Interstate Commerce Commission (R. 19) and of the United States (R. 23).

A judgment of the court in a case covers not only the points on which the court was actually required to form an opinion and pronounce judgment, but also every point which properly belonged to the subject of the litigation and which the parties, exercising reasonable diligence, might have brought forward at the time. It applies to every objection urged in a second suit, when the objection was open to the party in the legitimate scope of the pleadings of the former one and might have been presented in it.

Herman on Estoppel and Res Judicata, p. 548, §457.

This principle is very clearly stated in Grubb vs. Public Utilities Commission, 281 U. S. 470, rendered on the 19th of May, 1930. That case was based upon the order of the Ohio Commission granting a certificate to certain motor bus carriers, but excluding therefrom the loop at Portsmouth. The case was judicially reviewed by the Supreme Court of Ohio and that review had culminated in a judgment. Application was then made to the Commission for rehearing and was denied. A bill was then filed in the United States District Court. That court held that the Commission's order had been adjudged valid and the appellant was barred and estopped by that adjudication from further litigating the same matter. The court held (pp. 478-80):

> "The thing presented for adjudication in the case in the State court was the validity of the order, and it was incumbent on the appellant to present in support of his asserted right of attack every available ground of which he had knowledge. He was not at liberty to prosecute that right by piecemeal, as by presenting a part only of the available grounds, and reserving others for another suit, if failing in that. * * * As the ground just described was available but not put forward, the appellant must abide the rule that a judgment upon the merits in one suit is res judicata in another where the parties and subject matter are the same, not only as respects matters actually presented to sustain or defeat the right asserted, but also as respects any other available matter which might have been presented to that end."

To the same effect see:

Baltimore Steamship Co. vs. Phillips, 274 U. S. 316, 319;

United States vs. California & Oregon Land Co., 192 U. S. 355;
United States vs. Moser, 266 U. S. 236, 241.

It is recognized that

> "There is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. * * * If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. * * * But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered."

Cromwell vs. County of Sac, 94 U. S. 351-2-3.

In the case at bar the second case was upon the same claim or demand as that asserted as involved in the first; but whether this be true or not, the same matters were put in issue and the same points were controverted in both cases.

A judgment of a court which has become final in a controversy is the law of the case as between those parties in the progress of the trial of the same case.

See Herman on Estoppel and Res Judicata, Vol. 1, p. 118.

The original decree having become final, the case should have thereafter proceeded before the Commission in accordance therewith, and when it came back to the court on the supplemental bill the only question should have been whether its original decree had been executed according to its true intent and meaning.

Himely vs. Rose, 5 Cranch 313, 316.

It was proper to have undertaken to enforce the original decree by a supplemental bill, and the issues which had been adjudged in the original litigation thereby became res judicata, and on such issues there could be no further litigation between the parties and their privies.

Central Trust Co. of New York vs. Western North Carolina Railroad Co., 89 Fed. 24, 27, 28;
Pentlarge vs. Pentlarge, 22 Fed. 412;
City of Omaha vs. Omaha Electric Light & Power Co., 255 Fed. 801, 802 (C. C. A.);
Vanwert vs. Boyes (29 N. E. 710), 140 Ill. 89;
Osage Oil Co. vs. Continental Oil Co., 34 Fed. (2d) 585;
International Railway Co. vs. Prendergast, 29 Fed. (2d) 296.

The supplemental bill in this case was filed between the same parties in aid of the decree in the original suit and to carry out and give effect to that decree. (Root vs. Woolworth, 150 U. S. 401, 410, 411.)

It would seem that, on the most ordinary principles, the decree on the original bill was an adjudication that the proviso of the Commission's order of December 21, 1926, should be construed to require that the New Company should set up its Account 701, "Investment in Road and Equipment," on the basis of cash value of those properties, and as well an adjudication of every fact which was, or might have been, put in issue in reference to the construction and application of said proviso.

(b) THE DECREE ON THE ORIGINAL BILL WAS FINAL

We have seen that the decree on the original bill finally disposed of the case then before the court. It purported to be a final decree. It was rendered on final hearing. It directed the Commission to hear and determine the supplementary petition which had been filed, and in effect directed the Commission to determine the supplementary petition upon the basis of the current cash value of the property acquired by the New Company.

WHEN IS A DECREE FINAL?

> "A final decree means not a final determination of the rights of the parties with reference to the subject matter of the litigation, but merely of their rights with reference to the particular suit."
>
> 1st Black on Judgments, §21, p. 31.
>
> "It is not essential that the judgment be a bar to another suit."
>
> Colorado Eastern Ry. Co. vs. Union Pacific Ry. Co., 94 Fed. 312 (C. C. A.).
>
> "If a court make a decree fixing the rights and liabilities of the parties and thereupon refer the case to a

master *for a ministerial purpose only, and no further proceedings in court are contemplated, the decree is final;* but if it refer the case to him as a subordinate court, and for a judicial purpose, the decree is not final." (Italics added).

McGourkey vs. Toledo & Ohio Ry., 146 U. S. 536.

When the court enjoined the order of the Commission, its jurisdiction over the subject was at an end and its decree final.

The controversy in the original suit concerned the right of the New Company to have its road and equipment set up on its books on the basis of the value of the property acquired by it and that controversy was decided in its favor. The controversy under the supplemental bill is the same. The supplemental bill became necessary because the Commission failed to abide the decree of the court on the original bill. This makes a case very similar to St. Louis Iron Mountain & Southern Railroad Co. vs. Southern Express Co., 108 U. S. 24, 29. In that case the controversy was over the right of the Express Company to require the Railroad Company to do the Express Company's business upon the payment of lawful charges. In effect the decree required the Railroad Company to carry for reasonable rates and fix for the time being the maximum of what would be reasonable. The court held that the decree was final.

"A decree which determines the whole controversy between the parties, leaving nothing to be done except to carry it into execution, is a final decree for the purpose of appeal; and none the less so that the court retains the fund in controversy for distributing it as decreed."

Lewisburg Bank vs. Sheffey, 140 U. S. 445.

After the court's judgment the Commission was under the duty to have applied that decree in an administrative way. The Interstate Commission is an independent body with no judicial power; it can do only that which is legislative or administrative. The court had no jurisdiction over the Commission's decision on appeal or exception.

Cases of interest on the subject of a final decree will be found in

Beebe vs. Russell, 19 Howard 283;
Forgay vs. Conrad, 6 Howard 201;
Thomson vs. Dean, 7 Wall. 342;
French vs. Shoemaker, 12 Wall. 86.

The Commission after the original decree had a hearing on the supplementary petition and made a report and issued (October 9, 1929) what the appellee claims was an order (R. 493). The Commission's said report and order completely ignored the fact that the court had adjudged that under the language of the condition of the Commission's order of December 21, 1926, the basis of the entries in controversy should be the value of the property received by the New Company. Its last report, in effect, simply reiterated its original position. It held that the value of the property was neither pertinent nor material evidence (R. 494), thus making its report in complete conflict with the decree and as well with the requirements of Section 19a of the Interstate Commerce Act. The report of the Commission shows quite clearly that the Commission was conscious that it was not proceeding in accordance with the Court's decree, for it argues that the Court was in error. Note Record pp. 489, 493.

We respectfully submit that the decree of the lower court on the supplemental bill should be affirmed, for that the issues were adjudged in the original decree which was final and which was not appealed from.

If the cause is not so determined, we then state that the correct meaning and application of the proviso to the Commission's order of December 21, 1926, requires an affirmance of the Court's decree which is appealed from. This involves a discussion of the several subjects which follow.

II

THE ACTION OF THE COMMISSION CONSTITUTED AN ORDER OVER WHICH THE COURT HAS JURISDICTION

The Government contended in its answer to the original bill that the actions of the Commission up to the date of the filing of that petition (June 14, 1928) (R. 18) did not constitute an order within the meaning of the Commerce Court Act of June 18, 1910, and the Urgent Deficiencies Act of October 22, 1913 (R. 23). The Commission made the same point (R. 21). The court below in its original decree and the opinion accompanying it held that the Commission's acts had constituted an order "over which this court has jurisdiction under U. S. Code, Title 28, §41 (28)." (R. 222).

In the proceedings in the supplemental bill the Government again made the same point (R. 498). The court again found that the action of the Commission was "to be treated as an order, disobedience of which could be punished and may be reviewed in this court for the reason stated in our former opinion." (R. 500).

It is recognized that the District Court has no jurisdiction, under Title 28, Section 41, sub-section 28, U. S. Code Annotated, of an order of the Commission unless that order requires the carrier to do an affirmative act. The final action of the Commission had on October 9, 1929, after the first opinion of the court (R. 486-494), was in the form of a report. It must not be overlooked that this was not the first action of the Commission on this general subject. The first was October 26, 1926 (R. 311-319). That was a report and a certificate of the present and future convenience and necessity and also an order as to the filing of rate schedules. The second action was on December 21, 1926 (R. 320-324). There the Commission issued its order authorizing the New Company to issue not exceeding $5,180,344.07 of its preferred capital stock and not exceeding 150,000 shares of its common capital stock, with the proviso that "the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

The next proceeding before the Commission was the effort of the New Company to comply with that proviso by filing its balance sheet showing its investment in road and equipment, based upon the value of the property acquired by it. Then followed the rejection of that balance sheet by the Commission, acting through its director of accounts (R. 16), which action not only rejected the balance sheet but directed the filing of another to conform to the direction.

The next action was the supplemental application to the Commission by the Atlanta, Birmingham & Coast Railroad Company for a construction of the proviso contained in its order of December 21, 1926, and for authority to set up as the book value of the common stock the value of the property

received by it therefor (R. 289-295); and the order of the Commission, without hearing, dated April 9, 1928, which after the preamble is as follows (R. 10):

> "It is ordered that said petition be and it is hereby denied."

The District Court held in its first decree that those facts constituted an order, disobedience to which would be punishable (R. 222). Then followed a further hearing on the supplementary petition. Then the Commission made its report of October 9, 1929, now under consideration. The headnote reads as follows (R. 486):

> "Upon further hearing, application of commission's accounting regulations to statement of the investment accounts of the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927, considered and accounting *prescribed.*" (Italics added).

The last paragraph is as follows (R. 494):

> "Upon consideration of the record as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the new company, representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. *The company will be expected to adjust its accounts in accordance with this finding within sixty days from service of this report.*" (Italics added).

When the bill was presented to Mr. District Judge Sibley, the court, "to avoid consideration of a restraining order, requested the Commission to extend the effective date of this requirement to give time for a full hearing. The Commission did not disclaim its action as final but did extend the time of compliance for sixty days more." (R. 500).

The court in its last opinion, after making the statements referred to, said:

> "We think that the requirement is to be treated as an order, disobedience of which could be punished, and which may be reviewed in this court for the reason stated in our former opinion." (R. 500).

The sixty-day time limit was meaningless if that which the Commission had done was not the equivalent of an order. If there was no order, there was no sort of need of time limit. The moving forward of the time of the effective date of the report or order, as the case may be, at the instance of Mr. District Judge Sibley, would also have been meaningless if the Commission had not construed its action to be an order. The action of the Commission was in fact a supplementing of its previous orders which were issued as formal orders and became in effect a part of those formal orders; that is, the ones issued on October 26, 1926 (R. 31), and December 21, 1926 (R. 320). It "prescribed" certain action by the New Company. These actions of the Commission were then tied in on principle very much as in United States and I. C. C. vs. New River Company, 265 U. S. 533, where the court held:

> "An order of the Interstate Commerce Commission, in form dismissing a complaint of the shippers, but the effect of which was to require the observance of a rule of car distribution attacked in the proceedings as arbitrary, illegal and unconstitutional, held not a 'negative' order and reviewable in the District Court."

It will appear clearly that these actions of the Commission, culminating as above set out, amount to orders of the Commission which compelled the doing of affirmative acts.

Note the cases of:

New York Railway Co. vs. U. S., 14 Fed. (2d) 850;
Chicago Junction Case, 264 U. S. 258, 264;
U. S. vs. Illinois Central R. R., 244 U. S. 82;
Proctor & Gamble Co. vs. U. S., 225 U. S. 282;
Piedmont & Northern Ry. Co. vs. U. S., 280 U. S. 469.

The penalties prescribed by Section 20 of the Act to Regulate Commerce, sub-paragraph 7, include penalties for keeping "any other accounts, records, or memoranda than those *prescribed* or *approved* by the Commission." The penalties of this section of the Act are, therefore, imposed for the keeping of accounts, records, etc., other than those "*prescribed* or *approved* by the Commission."

The decision of this Court in the case of United States vs. Chicago, etc. Railroad Co., decided by this Court on January 5, 1931, would appear to be controlling on the question that the action of the Commission here involved is an order over which the Court has jurisdiction.

The action of the Commission prescribes (R. 486) and, as we contend, commands the keeping of certain accounts and certain records, and also commands that those accounts and records shall have certain contents. The Commission commands the carrier to enter its accounts in a designated way, with designated contents. Substance and not form controls.

The word "expect" has a secondary meaning, and this implies demand and not anticipation.

In the case of Sillman vs. Spokane Savings & Loan Society, 175 Pac. 296 (Wash.), the court held:

> "The primary meaning of the word 'expect' is doubtless as the applicant construes it; but the word has a sec-

ondary meaning, and its true meaning in any writing, like other words which may be used in varying senses, must be determined from the context of the writing and the circumstances surrounding its making."

Webster gives as one of the meanings of "expect," to demand; require. The author refers to this as obsolete. It is fair to presume that this is equivalent to "secondary."

It has been pointed out that in the headnote to the Commission's report of October 9, 1929 (R. 486), the Commission states that accounting is "*prescribed.*" The word "prescribe" means "to dictate; to give directions." (See Webster's International Dictionary.)

It would seem clear, therefore, that not only has it been adjudicated in the first decree that the report of the Commission was an order, but the Commission in effect so declares it.

III

THE CONSTRUCTION WHICH THE COMMISSION GIVES TO THE PROVISO TO ITS ORDER OF DECEMBER 21, 1926, BRINGS IT IN CONFLICT WITH PARAGRAPH (i) OF SECTION 19a OF THE INTERSTATE COMMERCE ACT

It is respectfully submitted that the proviso to the Commission's order of December 21, 1926, should be so construed as to make it harmonize with the duties of the Commission under the Act to Regulate Commerce and as well so as to make it harmonize with all of the provisions of that Act.

We now discuss the construction of this proviso independently of the decree of the court on the original bill.

The Commission's orders were arrived at by using the par value of the preferred stock plus the $4,080,699.80 paid by the Atlantic Coast Line Railroad Company to the reorganization committee of the Old Company, the purchaser, in settlement of prior claims as heretofore explained, and no part of which was received by the New Company. The Commission directed the New Company to enter this property on its books in Account 701, "Investment in Road and Equipment," upon a basis other than the cash value thereof.

The Commission in its report stated (R. 494):

> "Counsel for the new company also contends that paragraph (i) of section 19a requires that the value found under that section be treated as prima facie evidence of the value to be included in the investment accounts of the new company; *but we do not regard that value as pertinent or material evidence in the determination of investment, as that term is used in our accounting regulations.*" (Italics added).

This means that the Commission issued its orders without giving any effect whatever to the value of the property, although the court had in its first decree construed the language of the condition in the Commission's order as fixing the value of the property as the proper basis for the entry in said account (R. 221-223); and it also means that the Commission has given no force or effect whatever to the valuation of the property fixed by it under the provisions of Section 19a.

We respectfully assert that this action on the part of the Commission is in direct violation of the requirement of paragraph (i) of section 19a of the Interstate Commerce Act, which is in part as follows:

"All final valuations by the Commission and the classification thereof shall be published and shall be *prima facie evidence of the value of the property in all proceedings, under the Act to Regulate Commerce as of the date of the fixing thereof*, and in all judicial proceedings for the enforcement of the Act. * * *, and in all judicial proceedings to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission." (Italics added).

The direct words of this section require that the final valuations of the Commission "shall be prima facie evidence of the value of the property in all proceedings under the Act to Regulate Commerce."

The Interstate Commerce Commission had no power to proceed in a matter of this kind except "under the Act to Regulate Commerce." If it were proceeding within its jurisdiction, it was by that fact acting in a "proceeding under the Act to Regulate Commerce."

The Commission had no power to disregard its final valuation and in disregarding it, it proceeded in direct violation of the provisions of the Act. The question is not whether the *proper* weight was given to the valuation report, but it is that *no* weight was given to it. The Commission declared that this valuation was neither pertinent nor material.

In St. Louis and O'Fallon Railroad Co. vs. United States, 279 U. S. 461, 484, the court, speaking of paragraph 4 of Section 15a of the Act, and noting that it directs that in determining values of railway property for purposes of recapture the Commission "shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes and shall give to the property invest-

ment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes," said:

> "This is an express command; and the carrier has clear right to demand compliance therewith."

The court cites United States vs. Interstate Commerce Commission, 252 U. S. 178. In this latter case the Commission had refused to find the present cost of condemnation and damages or a purchase in excess of original cost, etc., of property. The court at page 187 said:

> "It is true that the Commission held that its non-action was caused by the fact that the command of the statute involved a consideration by it of matters 'beyond the possibility of rational determination,' and called for 'inadmissible assumptions,' and the indulging in 'impossible hypotheses' as to subjects 'incapable of rational ascertainment,' and that such conclusions were the necessary consequence of the Minnesota Rate Cases, 230 U. S. 352."

The court further said:

> "We are of opinion, however, that, considering the face of the statute and the reasoning of the Commission, it results that the conclusion of the Commission was erroneous, an error which was exclusively caused by a mistaken conception by the Commission of its relation to the subject, resulting in an unconscious disregard of its part of the power of Congress and an unwitting assumption by the Commission of authority that it did not possess."

The Commission appears to have acted in the case at bar in disregard of "an express command" of Congress, "and the carrier has clear right to demand compliance therewith."

IV

THE COMMISSION'S CONSTRUCTION OF THE PROVISO TO ITS ORDER OF DECEMBER 21, 1926 (R. 324), IF ALLOWED TO BECOME EFFECTIVE, WILL WORK GREAT HARDSHIP AND BRING ABOUT MANY INCONSISTENCIES

It will be remembered that the Commission's order was acted upon in the following manner:

The condition to the bid for the property was withdrawn and the bid made absolute and the property was conveyed to purchasers representing the reorganization committee; the purchasers caused the New Company to be created and to file its charter and proof of organization with the Commission, and the Commission issued its order of December 21, 1926; and then the purchasers of the property, acting on those two orders, conveyed the property to the New Company in consideration of its shares of stock, and the Atlantic Coast Line paid to the reorganization committee, in the manner which has been stated, the large amounts of money contemplated, and it was not until some months thereafter (August 3, 1927) that the Commission made its first construction of the proviso contained in its order of December 21, 1926 (R. 324), that "the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor" as requiring that the New Company set up against its common stock, not the value of the property which was received by it, but the $4,080,000 which it never received or had any interest in. That construction, if effective, will have the following results:

(a) It will require the New Company to make entry on its books under Account 701 of its "Investment in Road and

Equipment" at a figure which will have no relation to its investment or the value of the property received by it. The valuation of the property, made by the Commission, adjusted to improvements and betterments is very much greater than the figure prescribed by the Commission.

(b) It will require an entry under this account of a fictitious amount and will prohibit the carrier from keeping any other books or records in reference thereto, and will prohibit the carrier from so keeping its books or records in such manner that its correct financial condition is reflected thereby. It will require an entry upon the books and records of the New Company which will have to be proven to be untruthful in every rate investigation or in any other investigation wherein the value of its property is important, and it will prevent the carrier from exhibiting through its books to the Commission a proper statement either of its investment or of the value of the property. In other words, the books kept in the manner required by the Commission cannot be relied upon as speaking that truth which the New Company will be expected to produce to the court or to the Commission in any of these circumstances. The Commission recognizes that its orders require the entry of values not applicable to rate-making or to a fair return (R. 317); and, of course, it knows that the carrier can keep no other books or records.

(c) It will make the order of December 21, 1926, conflict with the provisions of Section 20 of the Act to Regulate Commerce which requires the carrier to show a complete exhibit of the financial operation of the carrier each year, including an annual balance sheet.

(d) It will require the New Company to so keep its books that depreciation cannot be properly set up as is allowed by

the Commission under Section 20, sub-section 5, of the Act to Regulate Commerce.

(e) If the books of appellee are kept as the proviso to the order under consideration is now construed by the Commission, it will be impossible for the appellee or the Commission to ascertain from its books, its reports, or records, whether or not there has been a net income in excess of six per cent of the value of the railway property as is contemplated by sub-section 6 of Section 15a of the Act, at which point the recapture provisions of the Act come into operation. Sub-section 6, referred to, contains the following:

> "If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of six per centum *of the value of the railway property* held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission," etc. (Italics added).

(f) The proviso, as the Commission now construes it, will make it impracticable for the carrier or the Commission to ascertain from its books what constitutes a fair return upon its property as is contemplated by sub-section 3 of Section 15a of the Act, which said sub-section 3 is as follows:

> "The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon."

(g) The order of the Commission, if given the construction contended for by it, will completely deprive the property investment account of the carrier of any evidential weight,

notwithstanding that sub-section 4 of Section 15a of the Act contemplates that it shall have evidential value.

(h) The proviso, as the Commission now construes it, will require the keeping of the carrier's books upon a basis which will reflect the value of its property wholly inconsistent with the standard of value fixed by this court in such cases as

Smyth vs. Ames, 169 U. S. 466, 547;
Minnesota Rate Cases, 230 U. S. 352;
Willcox vs. Consolidated Gas Co., 212 U. S. 19, 41;
St. Louis & O'Fallon Ry. Co. Case, 279 U. S. 461.

(i) Books kept on the plan as insisted upon by the Commission will be worse than valueless in matters affecting the credit of the New Company.

The question presented by this record is narrower than the power of the Commission to issue an order requiring even the hardships which would be required thereby. *The question in this connection is—Was the Commission correct in so construing the language of its proviso, after it had been acted upon, that it would inflict upon the New Company which had issued its securities for the consideration of the properties, the hardships referred to?*

The lower court held that "the words of the order of December 21, 1926, were acted on by the parties and should have their fair operation" (R. 221), and the court has held that their fair operation was different from the construction which the Commission put upon the words used. If the Commission had meant that the entry should be made not on the basis of the value of the properties received by the New Company from the sellers, to-wit, the representatives of the reorganization committee, but that the entry should represent only

a part of the consideration which the Atlantic Coast Line paid to that committee for the common stock, certainly it should have made that purpose clear before it was acted upon.

The Commission's Rule No. 41 contemplates that when properties are acquired by a rail carrier for a consideration other than cash, the "current cash value of the consideration" is to be entered in the accounts. The proviso fitted that condition and made reference to that rule, and the lower court has held that this Account 41, as well as the proviso, required the valuation of the property received by the New Company for its shares of preferred and common should be set up against the stock. This construction puts the action of the Commission in harmony with the whole scheme of the Act to Regulate Commerce and on a fair and rational basis and in harmony with the purposes for which accounts are kept, and is also consistent with the utterances of the Commission in the valuation proceedings and in its consolidation plans which have been referred to. Any other construction would impose upon the New Company unreasonable and harsh conditions, which would not serve the public and which would greatly injure the company in the respects above pointed out. The Commission's records are complete as to the history of this transaction. The New Company seeks no concealment. The Commission is possessed of all the information to be had on the subject. The Court's construction of the proviso avoids these hardships and inconsistencies.

In Kansas City Southern Railway Co. vs. United States, 231 U. S. 423, 440, this court, in dealing with the requirement of the Commission as to the distribution by the railroad of certain expenditures for operating costs and for additions and betterments, said:

"The very object of a system of accounts is to display the pertinent financial operations of the company and throw light upon its present condition. If they are to properly do this, the form must correspond with the substance."

In the opinion the court states (page 449) that one of the manifest objects of supervising accounts "was to enable the commissioners to intelligently perform their duties respecting the regulation of carriers' rates for the services performed," etc.

The construction which the Commission has undertaken to make of the proviso to its order, if effective, would destroy the use of the accounts of the carrier for any of the purposes for which the accounts are declared by this court in this opinion to be useful. Not only does it do that, but by preventing the carrier from keeping other records, accounts or memoranda, it makes it extremely difficult for the carrier to prove those things which are necessary to be proved in a number of circumstances, such as recapture of earnings, rate-making, depreciation, etc.

V

THE CASE OF PASSAIC CONSOLIDATED WATER COMPANY VS. BOARD OF PUBLIC UTILITY COMMISSIONERS

The construction which the Commission gives to the proviso in its order of December 21, 1926, is in conflict with the above mentioned case, which appears to be especially apposite to the case at bar. The Passaic case is from the Supreme Court of New Jersey (5 N. J. Misc. 1078—139 Atl. 324) and was affirmed by the Court of Errors and Appeals of that State, 104 N. J. 666 (141 Atl. 921). It involved an order

of the public utility commissioners, affecting the accounts of the Passaic Consolidated Water Company. The Water Company is a consolidation, October 26, 1923, of five companies. On March 7, 1923, the Commission had fixed the value of the property of those companies at $11,500,000 of which $300,000 was designated as working capital.

> "The Board in its approval of the consolidation directed that the books of the prosecutor should be opened on the basis of consolidated book costs, as shown in an exhibit referred to in said proceedings as Exhibit P-2. This exhibit fixed the valuation of the plant and working capital at the figures hereinbefore mentioned."

The Water Company opened its books on the basis of the consolidated book costs as of December 31, 1928, continued to the date of the merger, which was November 1, 1923. In its annual report for the year ending December 31, 1924, it used a different set of figures. In these figures the amount of fixed capital was of December 31, 1923, entered at $23,170,398, and after deducting depreciation reserve set up as a liability, it set up a net amount as fixed capital of $20,209,714. This was done as the result of an appraisement made by an expert in the valuation of public utilities. The Board objected to these figures and entered an order requiring that the books of account be conformed to the decision of the Commission of October 26, 1923, approving the consolidation, and to modify the charges made for depreciation, to rewrite its books of accounts and upon approval of the amended annual report the Water Company was not to set up other or different bases of fixed capital than that so approved. The court set aside this order of the Commission, holding:

"Upon the regulation of a public utility corporation by a board of public utility commissioners, all the incidents of ownership, except in so far as it may be necessary to curtail them to properly exercise the power of regulation, remain with the corporation."

The court also held:

"The right to regulate a utility does not destroy the right of private ownership."

"All the incidents of ownership, except in so far as it may be necessary to curtail them to properly exercise the power of regulation, remain with the corporation. If the order of the board is arbitrary and unreasonable and beyond the powers given to it by the statute, it is void. It seems to us that one of the rights of private ownership is the keeping of accounts, not solely for the purpose of establishing a basis for fixing rates, but for such other matters as appertain to the ordinary business of a utility corporation. It owes to its stockholders certain rights that may require an entry upon its books of what it determines to be the fair value of the property. It must be recognized that when a board is fixing a basis for rates it may perchance mistakenly undervalue the property of the utility or eliminate from the valuation elements which in the past have required the expenditure of considerable funds."

"In ascertaining the income and excess profits upon which taxes have to be paid to the federal government, for example, it is fair that the full value of the property should be used. To use it requires that such a valuation shall be entered on the books of account. In the event of the sale of any of the company's property for which it has no longer use, there should be a record of the true value of such property. These illustrations might be multiplied. They are only used for the purpose of showing that in the conduct of the affairs of a corpora-

tion questions regarding its property will arise which require that there be entered upon its books other entries than that of the valuation fixed by the utility board for rate-making purposes."

We respectfully submit that this case is precisely in point and that its expressions are entirely in accord with the opinion of this court in Kansas City, Southern Railway case, 231 U. S. 423, 449.

VI

SOME OF THE THINGS FOR WHICH A SYSTEM OF ACCOUNTS OF A RAILROAD COMPANY SHOULD BE USEFUL AND AS TO WHICH THE ACCOUNTS WOULD BE RENDERED WORSE THAN USELESS IF THE COMMISSION'S CONSTRUCTION HOLDS

Fair Return

It is contemplated by Section 15a, sub-division 2 of the Interstate Commerce Act, that the carrier shall have a fair return upon the aggregate value of its railway property. Of course, books kept under the requirements of the Commission's construction of its proviso to its order of December 21, 1926, will be worse than useless as to this.

Evidential Value of Books

Sub-section 4 of Section 15a contemplates that the property investment account of the carrier shall have evidential value. If the Commission's construction of the proviso to its order prevails, that evidential value will be inconsistent with the facts, will contribute to injustice, and will be contrary to the purposes of sub-section 4 of Section 15a.

Recapture of Earnings

Sub-section 6 of Section 15a provides for the recapture of a part of the net railway income in excess of six per centum "of the value of the railway property." The Commission's construction of the proviso to its order would make the carrier's account worse than useless in this connection.

Credit Standing

The carrier's accounts should properly reflect its condition so as to enable it to procure for itself its best credit standing. Books kept according to the Commission's construction of its proviso will not be helpful to credit standing, but destructive of it.

Taxation

The books of the carrier should reflect the value of its property which is considered in determining the amount of the tax based on excess profits or on any other method to which value is material. Books kept according to the Commission's construction of the proviso to its order would produce results unjust both to the carrier and to the public in such matters of taxation.

Stockholders

The condition of the books should properly reflect the status of the carrier to its stockholders. Books kept in accordance with the Commission's construction of its proviso would defeat this purpose.

PROPERTY INVESTMENT

The property investment account of the carrier should be of great value to it, especially so when kept consistently with the provisions of Section 19a of the Act.

The Kansas City Southern Railway case, 231 U. S. 449, evidently contemplates that this account is to be given substantial weight in reflecting the value of the property used in the public service. The value of property used in the public service is, of course, of great importance in determining the reasonableness of rates.

The property investment account kept in accordance with the Commission's construction of its proviso would not only make the investment account valueless but worse than valueless.

DEPRECIATION

A correct property account is necessary to the depreciation contemplated by Section 20, sub-paragraph 5 of the Act. Unless this account be kept to represent "present fair value" of the depreciable property, the account will be worse than useless.

United Railways vs. West, 280 U. S. 234, 254.

It is impossible under the Commission's construction of the order "to make full, true and correct entries in such accounts, records or memoranda of all facts and transactions appertaining to the carrier's business," as is required by Section 20, sub-section 7 of the Act.

The court below in both of its decrees thought that the proviso should not be construed so as to give it these effects. It will appear beyond any contradiction that the construction

of the proviso made by the Commission, after it had been acted upon, if allowed to become effective, will give to its order an unnatural and burdensome operation which can be of no value to the public or to the Commission or to the carrier and which can be of very great harm to the public, the Commission, the carrier, and to all other persons at interest. The language of the proviso does not require this construction and it ought not to be inflicted upon those who have acted on the order before this construction was made.

VII

THE CONSTRUCTION WHICH THE COMMISSION PLACES ON THE PROVISO TO ITS ORDER OF DECEMBER 21, 1926, WOULD MAKE THAT ORDER TO EXCEED ITS JURISDICTION

Of course, the Commission's order should be construed to be within the Commission's jurisdiction if that is possible.

Section 20a, sub-division 5 of the Act, authorizes the Commission to "prescribe the *forms* of any and all accounts, records and memoranda to be kept by the carriers subject to the provisions of the Act," etc. This part of the Act had its beginning in the Hepburn Act of June 29, 1906 (39 Stat. L. 594, § 7). This provision of the Hepburn Act was taken "in literal and exact terms from the draft of the bill submitted to Congress by the Commission in 1905, the passage of which it recommended."

U. S. vs. N. C. & St. L. Ry., 217 Fed. 254, 263.

Recommending the adoption of the amendment to Congress, the Commission said:

"An efficient means of discovering illegal practices would be found, as we believe, in authority to prescribe the *form* in which books of account shall be kept by railways, with the right on the part of the Commission to examine such books at any and all times through expert accountants. This recommendation has been urged upon the attention of Congress in previous reports, and we earnestly renew it at this time. Probably no one thing would go further than this toward the detection and punishment of rebates or kindred wrongdoing. (Nineteenth Annual Report of Interstate Commerce Commission, 1905, at pp. 11, 177, 182)." (Italics added).

217 Fed. 264.

It should be borne in mind that there was no order of the Commission that the accounts of the carriers should be set up as is now contended for until after the parties had acted upon the orders of October 26, 1926, and of December 21, 1926. The Commission did not construe the proviso to its order of December 21, 1926, so as to prevent the New Company from setting up the value of its property on its books until August 3, 1927, and April 9, 1928. The New Company did not construe the order as preventing it from setting up on its books the value of the property which it had "received" for its shares of stock, and when it "received" that property and when it did set up its books there had been no ruling of the Commission that it should not set up its books so as to reflect the value of that property. The court below has twice sustained the basis for setting up the books used by the New Company and by the same act has twice condemned the construction of the proviso made by the Commission. If the Commission had intended to prescribe the contents of the books and records of the New Company, it should have spoken in clear and certain language before the parties acted

upon its order, which certainly had no such necessary meaning.

The Commission's construction of its order prevents the carrier from setting up its property on its books so as to reflect the "basis for rate-making" (R. 317), and also requires the books to be set up in a manner which not only makes them useless in a rate-making controversy, in the ascertainment of a fair return, in the ascertainment of the recapture rights, and in use in tax matters such as excess profit taxes, and in ascertaining depreciation, but it makes them worse than useless.

We are not dealing with circumstances where the Commission had ordered these consequences before the parties had acted. The parties in the case at bar had acted upon the order of the Commission which, properly construed, had, we respectfully submit, no such effect as that now attributed to it by the Commission. It is not as though either the original purchasers or the New Company went into the transaction knowing the Commission's construction of its proviso. On the other hand, they went into this situation with the order of December 21, 1926, normally meaning that the property acquired by the New Company should be set up on its books on the basis of the value of that property. After the parties are committed, the Commission by a construction of its proviso undertakes to prohibit the New Company not only from setting up its books on that basis but commands the New Company to set up its books in a manner which will handicap, if not prevent, it from proving the values of its property when those values may become vital to it.

The moneys which the Atlantic Coast Line Railroad Company paid under the terms of the agreement here involved

were no more received by the New Company than was the fund of $1.50 per share, which was involved in the case of United States vs. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, decided by this Court on January 5th, received by it. In the Chicago and St. Paul case the carrier had a "speculative possibility" in some remainder of that fund. In the present case the New Company had no kind of interest, present or contingent, therein.

VIII

TERMS AND CONDITIONS

The Commission's action is based upon the provisions of Section 20a, sub-division 3 of the Act, which allows the Commission to grant application for the issuance of securities in part, or deny it in part, or to grant it with such modifications and "upon such terms and conditions as the Commission may deem necessary or appropriate in the premises." Section 20a is an amendment to the Act, coming into it on the 28th of February, 1920. It is not an independent section and is not to be independently construed. It is a part of a system which had been long in use and the amendment must be harmonized with the other parts of the system; for, after all, it becomes a part of the system and the system is one whole.

Note:

Robinson vs. Baltimore & Ohio Railroad Co., 222 U. S. 506-512;

Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co., 204 U. S. 426-448;

Lewis, Sutherland Statutory Construction, 2nd Ed., Vol. 2, p. 847, §§ 443 and 448, and authorities cited.

Statutes, of course, are to be construed so as to avoid hardship and unjust consequences unless the language compels such a result.

See Bankers Trust Co. vs. Bowers, 21 A. L. R. 922, (292 Fed. 793) 25 R. C. L. 1022.

"The various provisions of an act should be read so that all may, if possible, have their due and conjoint effect without repugnancy or inconsistency."

25 R. C. L., 1008, § 247.

Note:

United States vs. Landram, 118 U. S. 81, 85.

If Section 20a, sub-division 3, is construed so as to permit the Commission to prescribe any kinds of terms or conditions which it may deem best, it gives to it power to destroy or supersede any part of the Act. The accounting provisions of the Act (Section 20), as we have pointed out, limit the Commission's power to prescribing *forms* of accounts, and this preserves the carrier's initiative which this court has always been zealous to preserve.

Note:

I. C. C. vs. Chicago Great Western Ry., 209 U. S. 109, 119;
Great Northern Ry. vs. Minnesota, 238 U. S. 340, 346;
Southwestern Bell Telephone Co. vs. Commission, 262 U. S. 276, 289.

The general words of sub-section 3 of Section 20a, above quoted, are to be construed with reference to the particular subject then at hand, and the general terms and conditions which the Commission may prescribe are those which deal with the issuance of the securities; that is, as to the terms of

the instruments, the manner in which they will be secured, the rates of interest, the times of payment, the rights of calling for prepayment, and the cost of the issuance of the securities to the carrier, and the minimum rate at which the securities are to be sold. If these words are not confined to that subject, they then apply to any subject affecting the company issuing the securities, and they will then give to the Commission the power to upset all other provisions of the Act.

The New Company accepted the orders of the Commission of October 26, 1926 (R. 311-319), and of December 21, 1926 (R. 320-324). It construed those orders and especially the proviso to the order of the Commission of December 21, 1926, as requiring that its Account 701, "Investment in Road and Equipment," be set up on the basis of the value of the property acquired by the New Company in consideration of its shares of stock, common and preferred. It believed that that value should reflect every element for which value of property is useful to such a carrier. It acted upon that construction. The New Company submits that on the face of the proviso it was justified in so acting upon it; that no other construction can make that proviso harmonize with all parts of the law.

It cannot be that the Commission in granting to a carrier by railroad the right to exercise a privilege granted by the State can do so on condition that the carrier be required to surrender a right guaranteed to it by the Constitution of the United States.

Note the cases of:

Terral vs. Burke Construction Co., 257 U. S. 529, 532;
Frost Trucking Co. vs. Commission, 271 U. S. 583, 593;
Hanover Fire Ins. Co. vs. Harding, 272 U. S. 494, 507;

Adair vs. U. S., 208 U. S. 161, 180;
Western Union vs. Kansas, 216 U. S. 1, 47.

The New Company has a constitutional right to a fair return on the value of its properties used in the public service in the manner and to the extent determined by frequent decisions of this Court. To require that the carrier shall surrender important means of availing itself of that right is equivalent to depriving it to that extent of that constitutional protection.

C. B. & Q. R. R. vs. Osborne, 265 U. S. 14, 16.

The power to regulate commerce is not absolute, but is subject to the limitations and guaranties of the Constitution. (U. S. vs. Chicago, etc., R. R. Co.) This power does not apply to that which is not interstate commerce. The Commission's construction of the proviso to its order, undertaking thereby to deal with that money as though it were interstate commerce, will make the Commission's order in that respect to exceed its jurisdiction.

The Commission, by the construction which it undertakes to put on the proviso to its order of December 21, 1926, has undertaken to deprive the carrier of the right to keep the accounts and records necessary to prove the value of its properties in controversies concerning rates, returns, taxes, and as well as in other matters. The proviso to said order, we respectfully submit, bears no such construction, and one reason why it should not bear such construction is that, being so construed, it will require the carrier to strip itself of means necessary to it in the preservation of its constitutional rights.

For all the reasons herein stated, it is respectfully submitted, that the decree of the lower court should be affirmed or the appeal dismissed upon the motions submitted.

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APPENDIX

Section 20 (7) of the Act:

"Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved."

Account 41—Cost of Road Purchased (R. 435):

"This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current

cash basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made.

"This account shall be used only as a clearing account in which temporarily to carry the cost of road purchased until such time as a plan for distributing such cost to the primary accounts appropriate for the property is approved by the Commission.

"Note A—The appraised value of any equipment thus acquired shall be charged to the appropriate equipment accounts. The value, at time of purchase, of any securities, or other assets acquired, shall be included in the accounts appropriate for such assets. The par value of any liabilities assumed shall be included in the appropriate liability accounts, and the necessary adjustments between the cash value charged to the property accounts and the par value shall be made in the appropriate premium or discount account.

"Note B—The carrier shall be prepared to furnish the Commission, upon demand, a full report of the contract of acquisition of each road, or portion thereof, purchased, and a statement showing in detail the consideration given therefor. It should procure, in connection with the acquisition of any such road and equipment, all existing records, memoranda, and accounts in possession or control of the grantor, relating to the construction and improvements of such road and equipment, and shall preserve such records, memoranda, and accounts until authorized by law to destroy or otherwise dispose of them. Where the records, memoranda, and accounts are so intimately involved with other records, memoranda, and accounts of the grantor as to make their transfer impracticable or inadvisable, certified copies of them shall be procured and retained by the grantee. The verity of the copies should be certified by the custodian of the originals."

SUPREME COURT OF THE UNITED STATES.

No. 88.—October Term, 1930.

The United States of America, et al, Appellants, *vs.* Atlanta, Birmingham & Coast Railroad Co.	Appeal from the District Court of the United States for the Northern District of Georgia.

[February 24, 1931.]

Mr. Justice Brandeis delivered the opinion of the Court.

In this suit, brought in the federal court for northern Georgia, under the Urgent Deficiencies Act, October 22, 1913, c. 32, 38 Stat. 208, 219, the Atlanta, Birmingham & Coast Railroad Company seeks by supplemental bill to enjoin and annul an alleged order of the Interstate Commerce Commission dated October 9, 1929. No formal order was made. *Reorganization and Control of Atlanta, Birmingham and Atlantic Ry. Co.*, 158 I. C. C. 6, 14. The action challenged as an illegal order is the following passage of the Commission's report of that date concerning entries in the carrier's books of account:

"Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. The company will be expected to adjust its accounts in accordance with this finding within 60 days from service of this report."

The United States and the Commission contended that the bill should be dismissed for want of jurisdiction, among other reasons, because the action complained of is not an order within the meaning of the Urgent Deficiencies Act. The District Court, three judges sitting, overruled that objection; heard the case on the merits; and entered a final decree which declared that the action of the Commission "in so far as the same fixes the amount at which the Complainant is to return its capital stock and its investment in road and equipment, be set aside . . . and that the supplemental appli-

cation of the complainant on which said order was entered by the Interstate Commerce Commission stand for further hearing before said commission." 37 F. (2d) 401. The defendants appealed to this Court.

The Atlanta, Birmingham & Coast Railroad Company was incorporated in 1926 by the bondholders of the Atlanta, Birmingham & Atlantic Railway Company to take over upon foreclosure the property of the latter, consisting of 640 miles of line in Alabama and Georgia. The enterprise had been peculiarly disastrous to investors. Following long years of receivership with annual operating deficits there had been in 1915 a reorganization in which $35,000,000 in stocks and $14,500,000 in bonds were wiped out. Compare *Valuation of Atlanta, Birmingham & Atlantic R. R. Co.*, 75 I. C. C. 645, 703. By the reorganization of 1926, $30,000,000 more of stock was wiped out and the holders of the $8,600,000 bonds then outstanding received for them only 60 per cent of their face value in 5 per cent preferred stock of the new company. The 1926 reorganization was effected pursuant to an agreement between the bondholders' committee and the Atlantic Coast Line Railroad, under which the committee purchased at foreclosure sale all the property; transferred the same to the new company in exchange for all of its stock, being $5,180,344.07 redeemable preferred and 150,000 shares no-par common; transferred the common stock to the Atlantic Coast Line in consideration of its extinguishing the prior liens on the property, aggregating $4,080,699.80, and guaranteeing the preferred stock; and distributed the preferred stock among the bondholders. Thus, the Atlantic Coast Line acquired for $4,080,699.80 in cash and its guaranty of the preferred stock, complete ownership of the property subject only to the $5,180,344.07 redeemable preferred stock. These two sums aggregate $9,261,043.87 —the sum set forth in the passage of the report of October 9, 1929, which is challenged as an order.

The order of the Commission dated December 21, 1926, which authorized the new company to issue the preferred and common stock (117 I. C. C. 181, 439, 443), and thus made possible the 1926 reorganization, contained this provision:

"Provided, however, that authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and

equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.'"[1] 117 I. C. C. 443.

When the books of the new company were being opened, its accountants sought to set up in its balance sheet as "Investment in road and equipment" the sum of $29,271,859 instead of the $9,261,043.87 above shown. The larger entry was contended for on the grounds that this amount (with adjustments) had, on July 20, 1923, been determined by the Commission pursuant to § 19a of the Act of March 1, 1913, c. 92, 37 Stat. 701, to be the value of the property for rate-making purposes, estimated on the basis of 1914 reproduction costs. 75 I. C. C. 645. The Director of the Bureau of Accounts refused to permit the company to set up the investment of road and equipment as being $29,271,859. Treating the preferred stock as having been paid for at par, he directed that the value of the 150,000 shares of common stock should be set up at $4,080,699.80, that being the sum of money which the Atlantic Coast Line had disbursed in extinguishing the prior liens upon the property.

The new company then filed an application with the Commission requesting a hearing in support of its contention that the above quoted proviso in the order of December 21, 1926, authorized such

[1]The classification of primary accounts referred to as Account 41, "Cost of Road Purchased" prescribes:

"This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis. . . ." See "Classification of Investment in Road and Equipment of Steam Roads prescribed by Interstate Commerce Commission in accordance with Section 20 of the Act to Regulate Commerce," July 1, 1914, p. 29.

See also "Classification of Income, Profit and Loss and General Balance Sheet Accounts," *id.*, July 1, 1914, p. 50, as amended August 19, 1921,—Account 751. "Capital Stock. . . . When such certificates or receipts have no par value they shall be included in this account at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash."

entry of $29,271,859; and requested that oral argument be permitted. Without hearing oral argument, the Commission denied the application on April 9, 1928. The original bill in this suit was then brought to set that order aside. The court granted the relief and directed that the company's application "stand for further hearing before said commission." *Atlantic, Birmingham & Coast R. R. Co.* v. *United States*, 28 F. (2d) 885. The Commission granted the further hearing and thereupon, on October 9, 1929, filed the report first cited. In it, the Commission stated that the value of the property for rate-making purposes fixed in 1923, pursuant to § 19a, is not "pertinent or material evidence in the determination of investment, as that term is used in our accounting regulations." The report concluded with the passage quoted which appellee contends amounts to an order. 158 I. C. C. 6, 14.

First. The jurisdiction conferred upon district courts under the Urgent Deficiencies Act is that formerly exercised by the Commerce Court over "cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." Act of June 18, 1910, c. 309, § 1, 36 Stat. 539. The action here complained of is not in form an order. It is a part of a report—an opinion as distinguished from a mandate. The distinction between a report and an order has been observed in the practice of the Commission ever since its organization—and for compelling reasons. Its functions are manifold in character. In some matters its duty is merely to investigate and to report facts. See *United States* v. *Los Angeles & Salt Lake R. R. Co.*, 273 U. S. 299, 310. In others, to make determinations. See *Great Northern Ry. Co.* v. *United States*, 277 U. S. 172. In some, it acts in an advisory capacity. Compare *Minneapolis & St. Louis R. R. Co.* v. *Peoria & Pekin Union Ry. Co.*, 270 U. S. 580, 584-5. In others in a supervisory. Even in the regulation of rates, as to which the Commission possesses mandatory power, it frequently seeks to secure the desired action without issuing a command. In such cases it customarily points out in its report what the carriers are expected to do.[1] Such action is directory as distinguished from mandatory.

[1]See Advances in Rates, Western Case, 20 I. C. C. 307, 379; Goldenberg v. Clyde S. S. Co., 20 I. C. C. 527, 529; Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co., 20 I. C. C. 546, 549; Proposed Schedules of Rates on Lumber, 20 I. C. C. 575. When the car service rule discussed in United States v. New River Co., 265 U. S. 533, was first before the Commission, its report finding the rule unreasonable concluded with the statement: "We have not required that car

No case has been found in which matter embodied in a report and not followed by a formal order has been held to be subject to judicial review.[2] In *Kansas City Southern Ry.* v. *United States*, 231 U. S. 423, the accounting regulations which were challenged had been adopted by formal order of the Commission. Compare *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194. There are many cases in which action of the Commission although embodied in the form of an order, has been held by this Court not to be reviewable under the Urgent Deficiencies Act.[3]

As the District Court said in passing upon the original bill now relied upon: "Independently of the Commission's power under section 20, subsection 1 and subsection 5, to establish uniformity in and prescribe the forms of accounts of carriers, section 1, subdivision 20, authorizes the imposition of conditions upon its grant of a certificate of public convenience and necessity for the acquisition and operation of a railroad, and by necessary implication it has power to see that the condition is complied with. Disobedience to an order made to this end touching the accounts would be punishable under section 20, subsection 7, of the act as a willful

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service rules be filed as tariff schedule. We will not in this proceding direct that the rules which we herein find to be reasonable be so filed. We shall expect, however, that defendants will promptly amend their car service rules so as to conform with our findings and evidence same by filing copies thereof with us." Referring to this statement, this Court said (p. 540-1): "The Commission refrained from making an order that the rule be filed as a tariff schedule, but announced that it expected the carriers promptly to amend their car service rules to conform with its findings." Compare Colorado Fuel & Iron Co. *v.* Southern Pacific R. R. Co., 6 I. C. C. 488, 518, 587; Milk Products Protective Ass'n *v.* Delaware, L. & W. R. R. Co., 7 I. C. C. 92, 175; Board of Trade *v.* Nashville & St. Louis Ry. Co., 8 I. C. C. 503, 530; Denison Light & Power Co. *v.* Missouri, K. & T. Ry. Co., 10 I. C. C. 337, 341.

[2]Where the application is for a certificate of public convenience and necessity the order issued is called a certificate. See Chicago Junction Case, 264 U. S. 258; Colorado *v.* United States, 271 U. S. 153.

[3]Proctor & Gamble Co. *v.* United States, 225 U. S. 282; Hooker *v.* Knapp, 225 U. S. 302; Lehigh Valley R. R. Co. *v.* United States, 243 U. S. 412; United States *v.* Illinois Central R. R. Co., 244 U. S. 82, 89; Delaware & Hudson Co. *v.* United States, 266 U. S. 438; United States *v.* Los Angeles & Salt Lake R. R. Co., 273 U. S. 299; New York, Ontario & Western R. R. Co. *v.* United States, 14 F. (2d) 850, affirmed 273 U. S. 652; Piedmont & Northern Ry. Co. *v.* United States, 280 U. S. 469. See also Great Northern Ry. Co. *v.* United States, 277 U. S. 172.

failure to make a correct entry and the keeping of a record other than that approved by the Commission." 28 F. (2d) 887. The basis for such a liability should be certain. Compare *United States* v. *Fruit Growers Express Co.*, 279 U. S. 363, 369.

Second. In support of the contention that the passage in the report of the Commission of October 9, 1929, is legally an order, the Company insists that it must be read in connection not only with the action of April 9, 1928, attacked by the original bill, but also with the certificate of public necessity and convenience dated October 26, 1926, authorizing the new company to acquire the property, and the order of December 21, 1926, authorizing the issue of the $5,180,344.07 preferred stock and 150,000 shares of no-par common. Neither the original bill nor the supplemental bill attacks either the certificate or the order of December 21st. The validity of the certificate and of that order is not now challenged. Moreover, the record discloses that the certificate and the order have been acted upon by the acquisition of the property and issue of the stock.

Third. The Company contends that the decree of the District Court on the original bill, in which the defendants acquiesced, is a final adjudication of the issues involved in this case. The original bill dealt with the order of April 9, 1928; the supplemental bill with the alleged order of October 9, 1929. The Commission insists that the decree on the original bill did not deal with the merits, but determined only that the company must be accorded a hearing on its application. We need not determine whether jurisdiction existed to review the action of April 9, 1928, or the scope of the issues litigated in the original suit. For a finding of jurisdiction to review that order, or acquiescence by the defendants in the decree rendered on the original bill, would not have made *res judicata* the question whether jurisdiction existed to review the later action of October 9, 1929. Compare *Cromwell* v. *County of Sac*, 94 U. S. 351; *Pell* v. *McCabe*, 250 U. S. 573, 577. The lack of power to review, because of the absence of any order, cannot be cured by bringing the suit in the form of a supplemental rather than a new bill. Jurisdiction is equally lacking in either case.

Reversed.